

AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE
ON THE RECIPROCAL PROMOTION AND PROTECTION
OF INVESTMENTS

The Government of the Republic of South Africa and the Government of the Republic of France, hereinafter referred to as the Contracting Parties,

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for South African investments in France and French investments in the Republic of South Africa,

Convinced that the promotion and protection of these investments will succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows.

ARTICLE 1

For the purpose of this Agreement :

1. The term "investment" means any kind of asset, such as goods, rights and interests of whatever nature, and in particular though not exclusively :

a) Movable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights ;

b) Shares, premiums on shares and other kinds of interests, including minority or indirect forms, in companies established in the territory of one Contracting Party ;

c) Claims and title to money or debentures, or to any legitimate performance having an economic value ;

d) Intellectual, commercial and industrial property rights such as copyrights, patents, licences, trademarks, industrial models and designs, technical processes, know-how, tradenames and goodwill ;

e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in the maritime area of the Contracting Party concerned.

It is understood that those investments are investments which have already been made or may be made subsequent to the entering into force of this Agreement, in accordance with the legislation of the Contracting Party in whose territory or in whose maritime area the investment is made.

Any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party in whose territory or in whose maritime area the investment is made.

2. The term "nationals" means natural persons possessing the nationality of either Contracting Party, in accordance with the laws of that Party.

3. The term "company" means any legal person established in the territory of one Contracting Party in accordance with the legislation of that Party and having its head office in the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party, or by legal persons having their head office in the territory of one contracting Party and constituted in accordance with the legislation of that Party.

4. The term "returns" means all amounts generated by an investment, such as profits, royalties and interest, during a given period.

Investment returns and, in case of re-investment, re-investment returns shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party, as well as the maritime area of each Contracting Party, hereby defined as the economic zone and the continental shelf outwards the territorial sea of each Contracting Party over which they have in accordance with International Law sovereign rights and a jurisdiction with a view to prospecting, exploiting and preserving natural resources.

ARTICLE 2

Each Contracting Party shall admit and encourage in its territory and in its maritime area, in accordance with its legislation and with the provisions of this Agreement, investments made by nationals or companies of the other Contracting Party.

ARTICLE 3

Each Contracting Party shall accord fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party in its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice.

In particular though not exclusively, any restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any hindrance of the sale or transport of products within the country and abroad, as well as any other measures that have a similar effect, shall be considered as de jure or de facto impediments to fair and equitable treatment.

Within the framework of their internal legislation, the Contracting Parties shall benevolently examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made in the territory or in the maritime area of the other Contracting Party.

ARTICLE 4

Each Contracting Party shall accord in its territory and in its maritime area to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, a treatment not less favourable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favoured nation, if the latter is more favourable. In this respect, nationals authorized to work in the territory and in the maritime area of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities.

This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

The provisions of this article shall not apply to tax matters.

If a Contracting Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Contracting Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Contracting Party.

ARTICLE 5

1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety in the territory and in the maritime area of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments in its territory and in its maritime area, except in the public interest and provided that these measures are not discriminatory or contrary to a special commitment as defined in article 9.

Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned and shall be set in accordance with the normal economic situation prevailing prior to any threat of dispossession.

The said compensation, the amounts and conditions of payment, shall be set not later than the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable. Until the date of payment, it shall produce interest calculated at the appropriate market rate of interest.

3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own nationals or companies or to those of the most favoured nation.

ARTICLE 6

The Contracting Party in whose territory or in whose maritime area the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of :

- a) interest, dividends, profits and other current income,
- b) royalties deriving from rights listed in Article 1, Paragraph 1, sub-paragraphs (d) and (e).
- c) repayments of loans which have been regularly contracted,
- d) value of partial or total liquidation, realization or disposal of the investment, including capital gains on the capital invested ;
- e) compensation for dispossession or loss described in Article 5, Paragraphs 2 and 3.

The nationals of either Contracting Party, who have been authorized to work in the territory or in the maritime area of the other Contracting Party, in connection with an approved investment, shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the market exchange rate prevailing on the date of transfer.

ARTICLE 7

Any dispute concerning the investments occurring between one Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties to the dispute.

If this dispute has not been settled within a period of six months from the date on which it was raised by one or other of the parties to the dispute, it shall be submitted at the request of either party to the dispute to arbitration by the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention for the settlement of investment disputes between States and nationals of other States signed in Washington on March 18, 1965.

As long as one of the Contracting Party is not part to the above mentioned Convention, the dispute shall be settled by an *ad hoc* arbitration. The *ad hoc* Arbitral Tribunal shall be established as follows :

a) Each party to the dispute shall appoint one abitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third abitrator, who must be a national of a third Country, and who shall be designated as chairman of the Tribunal by the two parties. All the arbitrators must be appointed within two months from the date of notification by one party to the other party of its intention to submit the dispute to arbitration.

b) If the periods specified in the Section a) hereabove have not been met, either party to the dispute, in the absence of any other agreement, shall invite the Chairman of the International Chamber of Commerce of Paris to make the necessary appointments.

c) The Tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and legally binding upon the parties to the dispute.

The Tribunal shall set its own rules of procedures. It shall interpret the judgement at the request of either party to the dispute. Unless otherwise decided by the Tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two parties to the dispute.

ARTICLE 8

1. In the event that the regulations of one Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded, after examining case by case, to investments made by nationals or companies of this Party on the territory or in the maritime area of the other Party.

2. Investments made by nationals or companies of one Contracting Party in the territory or in the maritime area of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously agreed to by the other Contracting Party.

3. If one Contracting Party, as a result of a guarantee given for an invesment made in the territory or in the maritime area of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Contracting Party has in this case full rights of subrogation with regard to the rights and actions of the said national or company.

4. The said payments shall not affect the rights of the beneficiary of the guarantee to recourse to the ICSID or to the *ad hoc* arbitral Tribunal referred to in Article 7, or to continue proceedings submitted to it, until completion of the proceedings.

ARTICLE 9

Investments having formed the subject of a special commitment of one Contracting Party, with respect to the nationals or companies of the other Contracting Party, shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said commitment if the latter includes provisions more favourable than those of this Agreement.

ARTICLE 10

1. Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.

3. The said Tribunal shall be created as follows for each specific case : each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a national of a third Country, who shall be designated as Chairman of the Tribunal by the two Contracting Parties. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the periods specified in Paragraph 3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the Secretary General of the United Nations Organisation to make the necessary appointments. If the Secretary General is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Under-Secretary next in seniority to the Secretary General, who is not a national of either Contracting Party, shall make the necessary appointments.

5. The tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and legally binding upon the Contracting Parties.

The Tribunal shall set its own rules of procedure. It shall interpret the judgement at the request of either Contracting Party. Unless otherwise decided by the tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Contracting Parties.

ARTICLE 11

Each Contracting Party shall notify the other of the completion of the constitutional procedures required concerning the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the final notification.

The Agreement shall be in force for an initial period of ten years. It shall remain in force thereafter, unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

In case of termination of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Signed in Paris, on 11 October 1988
in duplicate in the English and French
languages, both texts being equally
authentic.

**For the Government
of the Republic of South Africa**

**For the Government
of the Republic of France**

Thabo Mbeki

Jean Subite

PROTOCOL

At the signing of the Agreement between the Government of the Republic of South Africa and the Government of the Republic of France on the reciprocal promotion and protection of investments, the two Contracting Parties have also agreed upon the following provisions which form an integral part of the said Agreement.

a) With regard to the Republic of South Africa the provisions relating to transfers under Articles 5.2 and 6 do not apply to nationals of the Republic of France who have obtained permanent residence in the Republic of South Africa and who have decided to immigrate to the Republic of South Africa by completing the required Exchange Control Form once a five year period from the date of immigration has lapsed.

This provision shall terminate upon removal of the relevant Exchange Control limitations by the Republic of South Africa, for which early removal the Republic of South Africa will undertake every effort possible.

b) On the request of either side the Contracting Parties will hold consultations on the interpretation or application of the present provision.

Signed in *Paris*, on *11 October 1985*
in duplicate in the English and French
languages, both texts being equally
authentic.

**For the Government
of the Republic of South Africa**

**For the Government
of the Republic of France**

Nato Mbeli *Jean Suhl*