



AGREEMENT

between

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

and

**the Government of the
Russian Federation**

**on the Promotion and Reciprocal
Protection of Investments**

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

intending to create favourable conditions for the realisation of investments by investors of either Contracting Party in the territory of the other Contracting Party,

recognising that the promotion and reciprocal protection of investments on the basis of the present Agreement shall stimulate the development of mutually beneficial commercial, economic, scientific and technical co-operation,

hereby agree as follows:

Article 1 Definitions

For the purposes of this agreement:

1. **"Investor of a Contracting Party"** shall mean with regard to each Contracting Party:

a) any natural person who is a citizen of the state of that Contracting Party and who has a legal right in accordance with the law of that Contracting Party to make investments in the territory of the other Contracting Party;

b) any legal person established or constituted in accordance with the law of that Contracting Party provided the legal person is competent, in accordance with the law of that Contracting Party, to make investments in the territory of the other Contracting Party.

2. **"Investments"** shall mean all kinds of assets which investors of one Contracting Party invest in the territory of the other Contracting Party in accordance with the latter Contracting Party's law and in particular, though not exclusively, includes:

a) movable and immovable property as well as other property rights;

b) shares, stocks and other forms of participation in business enterprises or companies;

c) claims to money or to any performance under contract having an economic value related to investment;

d) exclusive rights to intellectual property (copyrights, patents, industrial samples, models, trade marks, service marks, technology, information having commercial value, and "know-how");

e) rights conferred by law or under contract to conduct economic as well as commercial activity related in particular to exploration, development, extraction and exploitation of natural resources,

and any alteration of the form in which assets have been invested or reinvested shall not affect their character as investment on condition that this change is not in contradiction with the law of the Contracting Party in whose territory the investments were made.

3. **"Returns"** shall mean the amounts yielded by investments and includes in particular, profit, dividends, interest, capital gains, royalties, licence fees and other fees.

4. **"Territory of a Contracting Party"** shall mean the territory of the Republic of South Africa or the territory of the Russian Federation and shall include also their respective exclusive economic zone and continental shelf as defined in the Convention on the Law of the Sea, 1982.

5. **"Law of a Contracting Party"** shall mean laws, rules and regulations of the Republic of South Africa or the Russian Federation as the case may be .

Article 2
Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its law.
2. Each Contracting Party shall, in accordance with its law, guarantee to investors of the other Contracting Party full protection and security to investments made by investors of the other Contracting Party.

Article 3
Treatment of Investments

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of the investments made by investors of the other Contracting Party and of activities in connection with such investments and exclude the use of discriminatory measures that might hinder management and administration of investments.
2. The treatment referred to in paragraph 1 of this Article shall be at least as favourable as that granted to investments and activities in connection with such investments by its own investors or investors of a third state.
3. Each Contracting Party shall reserve the right to determine economic fields and areas of activity where activities of foreign investors shall be excluded or restricted. If a Contracting Party accords special advantages to development finance institutions with international participation, that Contracting Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Contracting Party.
4. The most favoured nation treatment granted in accordance with paragraph 2 of this Article shall not apply to benefits which the Contracting Party provides or will provide in the future:
 - a) in connection with participation in a free trade area, customs or economic union, common market, any similar international agreement, or such interim arrangement;
 - b) by virtue of agreements between the Russian Federation and the states which had earlier formed part of the Union of Soviet Socialist Republics;
 - c) on the basis of agreements for avoidance of double taxation, or other arrangements on taxation issues;
 - d) by virtue of any law or measure applied in the Republic of South Africa the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance natural or legal persons, or categories thereof, disadvantaged by unfair discrimination in its territory.

Article 4
Key Personnel

1. A Contracting Party shall, in accordance with its law of entry and sojourn of non-citizens, permit natural persons who are investors of the other Contracting Party and key personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities associated with investments.
2. A Contracting Party shall, in accordance with its law, permit investors of the other Contracting Party who have made investments in the territory of the first Contracting Party to employ key personnel of their choice regardless of citizenship on condition that such employee shall apply for permission for entry, sojourn and work in the territory of the first Contracting Party and such employment corresponds to conditions and time limits stipulated in such employee's permission.

Article 5
Transparency

Each Contracting Party, with a view to promoting the understanding of its law that pertains to or affects investments in its territory made by investors of the other Contracting Party, shall make such law public and readily accessible.

Article 6 Expropriation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, shall not be expropriated, nationalised or subjected to measures tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation"), except if such measures are taken for a public interest and in accordance with procedure established by law, and if such measures are not discriminatory and are followed by prompt, adequate and effective compensation.

2. The compensation shall correspond to the real market value of the expropriated investments immediately before the time when the actual or impending expropriation became known. Compensation shall be paid without unreasonable delay in freely convertible currency and shall be freely transferrable. Until the date of payment the amount of compensation shall be subject to accrued interest based on the interest rate applicable in the territory in which the investments were made.

3. The requisition and confiscation shall be made only in accordance with due procedure of the law of a Contracting Party.

Article 7 Compensation for Losses

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party as a result of war, civil disturbance or similar events shall be accorded by the other Contracting Party a treatment which is no less favourable than that accorded by the latter to its own investors or to investors of a third State, in regard to any measure it takes in relation to such losses.

Article 8 Transfers of Payment

1. Each Contracting Party, subject to its law, shall guarantee to investors of the other Contracting Party, upon fulfilment by them of all tax obligations, the free transfer abroad of payments related to their investments, and in particular:

- a) the initial capital and additional amounts made to maintain or increase an investment;
- b) returns;
- c) funds in repayment of loans recognized by the Contracting Parties as investments;
- d) proceeds from sale or full or partial liquidation of an investment;
- e) compensation as contemplated in Articles 6 and 7 of this Agreement;
- f) wages and other remuneration received by key personnel of the investors of the other Contracting Party who have a right to work in the territory of the first Contracting Party in relation to an investment.

2. Transfers shall be made without delay in a convertible currency at the rate of exchange applicable on the date of a transfer pursuant to the existing exchange regulations of the Contracting Party in whose territory the investments were made.

Article 9 Subrogation

A Contracting Party or its designated agency having made payment to an investor based on a guarantee issued for non-commercial risks in relation to an investment in the territory of the other Contracting Party is, by virtue of subrogation, entitled to exercise the rights of the investors to the same extent as the said investor. Such rights shall be exercised in accordance with the law of the latter Contracting Party.

Article 10

Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party arising in connection with an investment, including disputes relating to the amount, conditions and procedure of payment of a compensation in accordance with Articles 6 and 7 or to the procedure of transfer of payments as set out in Article 8 of this Agreement, shall be notified in writing by the investor to the last mentioned Contracting Party, or by the last mentioned Contracting Party to the investor, as the case may be, and such notification shall be accompanied by a detailed commentary. The parties to the dispute shall, to the extent possible, seek a settlement to such dispute by way of negotiation.
2. In case the dispute cannot be settled in such a manner during a period of six months starting from the date on which written notification referred to in paragraph 1 of this Article was sent it shall be submitted, at the choice of the investor involved, for consideration to:
 - a) a competent court or arbitration court of the Contracting Party in whose territory the investments were made;
 - b) the Arbitration Institute of the Chamber of Commerce of Stockholm;
 - c) an *ad hoc* arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. An arbitration decision shall be final and binding upon both parties to the dispute. Each Contracting Party undertakes to enforce this decision in accordance with its law.

Article 11

Settlement of disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by way of negotiation.
2. If a dispute is not settled in such a way within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitration court.
3. Such an arbitration court shall be constituted for each individual case in the following manner. Each Contracting Party shall appoint one member of the arbitration court within two months of the receipt of the request for arbitration. Those two members shall then select a citizen of a third State who on the approval of the two Contracting Parties shall be appointed as the Chairman of the arbitration court within a month from the date of the appointment of the other two members.
4. If within the time-limits specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice (hereinafter: "the ICJ") to make such appointments. If the President of the ICJ is a citizen of a state of either Contracting Party or is otherwise unable to discharge the said function, the Vice-President of the ICJ shall be invited to make the necessary appointments. If the Vice-President of the ICJ is a citizen of a state of either Contracting Party or is otherwise unable to discharge the said function the member of the ICJ next in seniority who is not citizen of a state of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitration court shall reach its decision by a majority of votes. Such decision shall be final and binding upon the Contracting Parties. Each Contracting Party shall bear the costs of activities of its own member of the court and of its representation in the arbitration proceedings; the costs related to the activities of the Chairman of the arbitration court and other costs shall be borne in equal parts by the Contracting Parties. The Court may, however, in its decision direct that a higher portion of costs shall be borne by one of the Contracting Parties and such decision shall be binding on both Contracting Parties. The arbitration court shall establish its own procedure independently.

**Article 12
Consultations**

The Contracting Parties shall consult at the request of either of them on any matter concerning the interpretation or application of this Agreement.

**Article 13
Application of the Agreement**

1. This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party as of January 1, 1987.

**Article 14
Entry into force, Amendment and Duration of the Agreement**

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of its internal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

2. This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force for twelve months from the date on which one of the Contracting Parties notifies the other Contracting Party in writing of its intention to terminate this Agreement.

3. This Agreement may be amended in writing by mutual consent of the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other Contracting Party in writing that it has completed all internal procedures for the entry into force of such amendment.

4. With respect to investments made while this Agreement is in force its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement in two originals in the English and Russian languages, both texts being equally authentic.

Done at MOSCOW, on this 23rd day of NOVEMBER, 1998.


**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**


**FOR THE GOVERNMENT OF
THE RUSSIAN FEDERATION**