

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

The Government of the Hellenic Republic and the Government of the Republic of South Africa,

Hereinafter referred to as the "Contracting Parties",

DESIRING to intensify their economic cooperation to the mutual benefit of Contracting Parties on a long term basis,

HAVING as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of investments, on the basis of this Agreement, will stimulate the initiative in this field,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset and in particular, though not exclusively, includes:

- a) Movable and immovable property and any other rights in rem such as servitudes, usufructs, mortgages, liens or pledges;
- b) Shares in and stock and debentures of a company and any other form of participation in a company;
- c) Claims to money or to any performance under contract having an economic value, as well as loans connected to an investment;
- d) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade names, trade marks, trade and business secrets, technical processes, know-how and goodwill;
- e) Business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

A possible change in the form in which the investments have been made does not affect their character as investments.

2. "Returns" means the amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

3. "Investor" means with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its law;
- b) Legal persons or other entities, including companies, corporations business associations and partnerships, which are constituted or otherwise duly organised under the laws of that Contracting Party and have their effective economic activities in the territory of that same Contracting Party.

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as maritime areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.
2. Investments by investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, is not in any way impaired by unjustifiable or discriminatory measures.
3. Returns from the investments and, in cases of reinvestment, the income ensuing therefrom, enjoy the same protection as the initial investments.
4. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards their activity in connection with investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.
3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
 - a) Its participation in any existing or future customs union, economic union, regional economic integration agreement or similar international agreement, or
 - b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.
4. If a Contracting Party accords special advantages to international development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly nonprofit 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 4. Expropriation

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party, shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation"), except in the public interest, under due process of law, on a non discriminatory basis and against payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or became public knowledge, whichever is the earlier, it shall include interest from the date of expropriation until the date of payment at a normal commercial rate and shall be freely transferable in a freely convertible currency.
2. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its own territory and in which investors of the other Contracting Party own shares.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbance or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable. Resulting payments shall be made without delay and shall be freely transferable in a freely convertible currency.
2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred

to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their investment or part thereof by the latter's forces or authorities, or
- b) Destruction of their investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 6. Transfers of Investment and Returns

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other contracting Party, the unrestricted transfer of the investment and its returns.

The transfers shall be effected without delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer.

2. Such transfers shall include in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties and fees;
- e) Proceeds of sale or liquidation of the whole or any part of the investment;
- f) Compensation under Articles 4 and 5.

3. Transfers shall be done in accordance with the procedures laid down in the laws pertaining thereto. Such laws shall not, however, regarding either the requirements or the application thereof, impair or derogate from the free and undelayed transfer allowed in terms of paragraph 1.

Article 7. Subrogation

1. If the investments of an investor of one Contracting Party in the territory of the other Contracting Party are insured against non-commercial risks under a legal system of guarantee, any subrogation of the insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, without prejudice to the rights of the investor under Article 9 of this Agreement.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Contracting Party and an insurer shall be tried to be remedied in accordance with the provisions of Article 9 of this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations, through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall, upon request of either Contracting Party be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If within the periods 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 to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise

prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. The arbitration tribunal shall decide on the basis of respect of the law, including particularly this Agreement and other relevant agreements between the Contracting Parties, as well as the generally acknowledged rules and principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

7. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be born in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be born by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, if possible, be settled by the disputing parties in an amicable way.

2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute either to the competent courts of the Contracting Party in the territory of which the investment has been made or to international arbitration.

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

3. Where the dispute is referred to international arbitration the investor concerned may submit the dispute to:

a) The International Centre for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on 18 March 1965, when each Contracting Party has become a party to said Convention.

As long as this requirement is not met, each Contracting Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID; or

b) An ad hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.), or

c) Any other international arbitration or an ad hoc arbitration tribunal as agreed between the parties to the dispute.

4. The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

5. During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

Article 10. Application of other Rules

If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties In addition to this Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall, to the extent that they are more favourable, prevail over this Agreement.

Article 11. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the

implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

Article 12. Application

This Agreement shall also apply to existing investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party, consistent with the latter's legislation.

Article 13. Entry Into Force — Duration — Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective laws to this end have been completed. It shall remain in force for a period of ten years from that date.
2. Unless notice of termination has been given by either Contracting Party at least one year before the date of expiry of its validity, this Agreement shall thereafter be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least one year before the date of expiry of its current period of validity.
3. In respect of investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a further period of ten years from that date.

Done in duplicate at Pretoria on November 19, 1998, in the Greek and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Protocol

Protocol to the Agreement between the Government of the Hellenic Republic and the Government of the Republic of South Africa on the Promotion and reciprocal Protection of Investments

On the signing of the Agreement between the Government of the Hellenic Republic and the Government of the Republic of South Africa on the Promotion and reciprocal Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

Ad Articles 4, 5 and 6 Ad Articles 4, 5 and 6

The provisions relating to transfers under Articles 4, 5 and 6 shall not be applicable to nationals of the Hellenic Republic to the extent that such provisions are incompatible with the foreign exchange restrictions on foreign nationals with permanent residence in and having immigrated to the Republic of South Africa in force on the date of entry into force of the Agreement.

The exemptions to Articles 4, 5 and 6 provided for in terms of this Protocol shall automatically terminate for each restriction upon removal of such restriction and for whose early removal the Republic of South Africa will undertake every possible effort.

Done in duplicate at Pretoria on November 19, 1998 in the Greek and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA