

**AGREEMENT BETWEEN THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA  
AND  
THE GOVERNMENT OF THE THE STATE OF QATAR ON  
THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS  
PREAMBLE**

The Government of the Republic of South Africa and The Government of the State of Qatar (hereinafter jointly referred to as the "Contracting Parties", and in singular as a "Contracting Party");

DESIRING to create favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party; and

RECOGNISING that the promotion and reciprocal protection of investments will stimulate the flow of capital and technology between the two Contracting Parties in the interest of economic development;

HEREBY AGREE as follows:

### **Article 1. Definitions**

In this Agreement, unless the context indicates otherwise -

"investment" means every kind of asset established or acquired including changes in the form of such investment, in accordance with the domestic law of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

- (a) movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;
- (b) shares in and stock and debentures of a company and any other similar forms of participation in a company;
- (c) rights to money or to any performance under contract having a financial value;
- (d) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how and goodwill;
- (e) business concessions conferred by law or under contract, including concessions to search for and extract oil and other natural resources.

"returns" means the monetary amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees. Returns reinvested shall have the same protection as enjoyed by an investment.

"investor" means -

- a) in respect of the State of Qatar -

- (i) Natural persons deriving their status as nationals of the State of Qatar from its applicable domestic law;
- (ii) Government and Governmental agencies, corporations, companies, firms or business associations incorporated or constituted under the law in force in the State of Qatar and having their headquarters in the territory of the State of Qatar, and

b) in respect of the Republic of South Africa -

- (i) The nationals of the Republic of South Africa, being those natural persons deriving their status as nationals from the domestic law of that country; and
- (ii) The companies of the Republic of South Africa, being any legal person, corporation, firm or association incorporated or constituted in accordance with the domestic law of the Republic of South Africa.

"territory" means the lands of the Contracting Parties, their territorial waters, the air space above them, the exclusive economic zone and the continental shelf over which the States of the Contracting Parties in accordance with international law and their domestic law and regulations, exercises sovereignty, jurisdiction and sovereign rights.

## **Article 2. Scope of Agreement**

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any disputes concerning any investment that arose, or any claim concerning an investment that was settled, before the entry into force of this Agreement.

## **Article 3. Promotion and Protection of Investment**

- 1) Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its domestic laws.
- 2) Each Contracting Party shall grant, in accordance with the domestic law of its country, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

## **Article 4. Treatment of Investments**

- 1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors or the other Contracting Party.
- 2) Each Contracting Party shall accord to investments of investors, and returns on the investments, of the other Contracting Party, treatment that shall not be less favourable than that accorded to investments of its own or investments of investors of any third State.
- 3) The provisions of sub-Article (2) shall not be construed so as to oblige one Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
  - (a) any existing or future Customs Unions, Free Trade Area, Common Market, any similar international agreement or any interim arrangement leading up to such Customs Union, Free Trade Area or Common Market to which either of the Contracting Parties is or may become a party, or
  - (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic law relating wholly or mainly to taxation.

## **Article 5. Expropriation and Compensation**

1. The investment shall not be subject, either directly or indirectly, to any act of expropriation or nationalization or to any other procedure of similar effect, unless it is intended for public interest and without discrimination against fair and equitable compensation paid in accordance with the legal procedures and general principles of the type of treatment stipulated in sub Article (2).
  - (a) The compensation referred to in sub Article (1) shall be equivalent to the real market value for the expropriated

investment at the time of its expropriation or its declaration and shall be estimated in accordance with a normal economic situation prevailing prior to any threat of expropriation.

(b) The compensation due shall be paid without unreasonable delay and shall enjoy free transfer, and it shall include interest at a fair and equitable rate: provided that it shall not be less than the prevailing six (6) months LIBOR - rate of interest or equivalent from the date of expropriation until the date of payment.

(a) Without prejudice to the rights of the investor under Article (8) of this agreement, the investor shall have the right, under the domestic law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of the valuation of the compensation in accordance with the principles set out in this Article.

(b) The Contracting Party making the expropriation shall make every endeavor to ensure that such review is carried out promptly.

4. Where a Contracting Party expropriates the assets of a company that is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of sub Article (1) are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

5. 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 or civil disturbances in the territory of that other Contracting Party shall be accorded by that other Contracting Party, treatment as regards restitution, indemnification, compensation or other settlement no less favorable than that which the other Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

6. Without derogating from the provisions of subArticle (5), investors of one Contracting Party who in any of the situations referred to in that subArticle suffer losses in the territory of the other Contracting Party resulting from requisitioning and destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or not required by the necessity of the situation, shall be accorded restitution or adequate compensation.

## **Article 6. Repatriation of Investment and Returns**

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds shall include: -

a. capital and additional capital amounts used to maintain and increase the investment;

b. returns;

c. repayments of any loan including interest thereon, relating to the investment;

d. proceeds from sales of their shares;

e. proceeds received by investors in case of sale or partial sale or liquidation;

f. the earnings of citizens or nationals of a Contracting Party who work in connection with an investment in the territory of the other Contracting Party;

g. compensation pursuant to article (5) of this Agreement;

(a) Unless otherwise agreed to between the parties, currency transfer under subArticle (1) shall be permitted in the currency of the original investment or any other convertible currency.

(b) Such transfer shall be made at prevailing market rate of exchange on the date of transfer.

## **Article 7. Subrogation**

Where a Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claim under this Agreement, the other Contracting party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the**

## **other Contracting Party**

1) Any legal dispute under the provisions of this Agreement, arising directly from an investment between either Contracting Party and an investor of the other Contracting Party shall be settled amicably among themselves.

2) If such a dispute cannot be settled according to the provisions of subArticle (1) within six (6) months from the date of request in writing for settlement, either party to the dispute may submit the dispute to: -

a) a competent court of the host Contracting Party for decision, if the investor so agrees;

b) the International Center for the Settlement of Investment Disputes established under the Convention on the Settlement of investment Disputes between States and Nationals of other States of March 18, 1965 done in Washington, D.C., if this Convention is applicable to the Contracting Parties; or

c) an Ad Hoc Arbitral Tribunal.

3) The Ad Hoc Arbitral Tribunal specified under subArticle (2) (c) shall be

Established as follows:

a) Each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed, shall select by mutual agreement a third arbitrator who must be a citizen of a third country and who shall be appointed 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 party to the other party of its intention to submit the dispute to arbitration.

b) If the appointments are not done within the period specified in paragraph (a), either party, in the absence of any other agreement, shall invite the President, the Vice-President or the next senior judge of the International Court of Justice who is not a national of either Contracting Party to make the necessary appointments.

c) The Ad Hoc Arbitral Tribunal shall reach its decision by a majority votes. These decisions shall be final and legally binding upon the Contracting Parties and shall be enforced in accordance with the domestic law of the Contracting Party to the dispute. The decision shall be taken in conformity with the provisions of this Agreement and the law of the Contracting Party to the dispute.

d) The Tribunal shall interpret its award and give reasons and bases of its decision at the request of either party. Unless otherwise agreed by the parties, the venue of Arbitration will be The Hague (Netherlands).

4) Subject to the above, the Tribunal shall follow the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL), 1976.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1) The Contracting Parties shall strive with good faith and mutual cooperation to reach a fair and quick settlement of any dispute arising between them concerning the interpretation or application or execution of this Agreement. In this regard the Contracting Parties hereby agree to enter into direct objective negotiations to reach such settlement. If the disagreement 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 composed of three members.

2) Within a period of two months from the date of receiving the said request each Contracting Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint, within a period of two months and with the approval of both Contracting Parties, a national of a third country as Chairman of the Tribunal.

3) If within the periods specified in subArticle (2) 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 any necessary appointments. If otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he or she too is prevented from discharging the said function, the members of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

4) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting

Parties. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting parties and this award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedure.

5) Unless otherwise agreed by the Contracting Parties, the venue of Arbitration shall be The Hague, Netherlands.

6) All claims shall be submitted and all hearing sessions shall be completed within a period of eight months from the date the third member is appointed, unless otherwise agreed. The Tribunal shall issue its decision within two months from the date of submitting the final claims or the date of closing the general sessions, whichever is later.

7) It shall not be permitted to submit a dispute to an Arbitration Tribunal pursuant to the rules of this Article if the same dispute was submitted to another Arbitration Tribunal pursuant to the rules of Article (8) and which is still under hearing by that Tribunal. This however, shall not affect entering into direct and constructive negotiations between the Contracting Parties.

## **Article 10. Applicable Laws**

Except as otherwise provided in this Agreement, all investments shall be governed by the domestic law in force in the territory of the Contracting Party in which such investments are made.

## **Article 11. Application of the Rules**

1. If the provisions of the domestic law of the country of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to 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.

2. 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 12. Amendment**

This Agreement may be amended by mutual consent of the Contracting Parties through an Exchange of Notes between the Contracting Parties through the diplomatic channel. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all requirements for entry into force of such amendment.

## **Article 13. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date on which each Contracting Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirement necessary for the implementation thereof. The date of entry into force shall be the date of last notification.

2. This Agreement shall remain in force for a period of ten (10) years and thereafter it shall be deemed to be automatically renewed unless terminated in accordance with subArticle (3).

3. This Agreement may be terminated by either Contracting Party giving one (1) year written notice in advance through the diplomatic channel to the other Contracting Party of its intention to terminate it.

4. Notwithstanding termination in terms of subArticle (3), this Agreement shall continue to be effective for a further period of (10) ten years after the date of termination in respect of investments made or acquired before the date of termination.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed and sealed this Agreement in two originals, in the English and Arabic, languages, all texts being equally authentic.

Done at..... on this.. 0:1..... t..... day of..... 2003

H.E. Dr Nkosazana Dlamini Zuma Minister of Foreign Affairs "

For the Government of the Republic of South Africa

B3Mfamad bin Faisal Al-Thani Minister of Economy and Commerce For the Government of the State of Qatar

Protocol to the Agreement Between

The Government of the Republic of South Africa

And the

Government of the State of Qatar

On the Promotion and Reciprocal Protection of Investments.

On the signing of the Agreement between the Government of the State of Qatar 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 Article 4

1. The provisions of this Article shall not oblige the Republic of South Africa to extend to investors of the State of Qatar any preference or privilege resulting from any law or other measure the purpose of which is to promote the achievement of quality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

2. The provisions of this Article should also not prevent the Qatari authorities to provide particular incentives or rights, exclusively to its own investors, pursuant to its applicable laws and regulations for the purpose of encouraging Qatari investors to participate and to be involved in the development of the national economy.

Ad Article 6

1. With regard to the Republic of South Africa the provisions relating to transfer under this Article do not apply to natural persons who are foreign nationals and who have applied for permanent residency, after having completed the required exchange control formalities, and who are accordingly deemed to be permanent residents of South Africa.

2. The exemptions to Article 6 as contemplated in paragraph 1 of this Protocol shall terminate automatically in respect of each restriction, upon removal of the relevant restrictions as part of the domestic law of South Africa.

3. The Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible.

4. Paragraph 1 of this Article shall not apply to or restrict the transfer of compensation payments made pursuant to Article 5 of this Agreement.

This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this Protocol in two originals, in the English and Arabic languages, all texts being equally authentic.

H.E. B ii

Minister of Foreign Affairs

Minister of Economy and Commerce For the Government of the State of Qatar

For the Government of the Republic of South Africa