

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

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

Desiring to enhance economic cooperation between the two States and to create favourable conditions for French investments in the Republic of South Africa and South Africa in France;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "Investment" means all assets, such as property rights and interests of all kinds, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, guarantees and any other similar rights;
- b) Shares, issue premiums and other forms of participation, even minority or indirect, in shares issued in the territory of one of the Contracting Parties,;
- c) The obligations and rights, claims to any performance having economic value;
- d) Intellectual property rights, commercial and industrial such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those situated in maritime area of the Contracting Party concerned.

It is understood that such assets must be or have been invested in accordance with the law of the Contracting Party in the territory or maritime area in which the investment is made before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties in accordance with the laws of that Contracting Party.

3. The term "companies" shall mean any legal person established in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "income" refers to all amounts generated by an investment such as profits, royalties or interest for a given period of time.

Investment income and, in the case of reinvestment, the income from reinvestment enjoys 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 of the Contracting Parties, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and on which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

## **Article 2.**

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime area.

## **Article 3.**

Each Contracting Party undertakes to provide, in its territory and in the maritime area, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other party and to ensure the enjoyment of the right thus recognized in a fair and equitable treatment is hampered in either law or in fact.

In particular, though not exclusively, any restriction to purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transfer of products inside the country and abroad, as well as any other measures having a similar effect, shall be regarded as barriers of fact or law in fair and equitable treatment.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, and movement of nationals of one Contracting Party in respect of an investment in the territory or maritime zones of the other contracting party.

## **Article 4.**

Each Contracting Party shall, in its territory and in the maritime area to nationals or companies of the other contracting party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals who are authorised to work in the Territory and in the maritime area of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, 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 foreign participation with development finance institutions and established for the exclusive purpose of development assistance, mainly through 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. Investments made by companies or nationals of either Contracting Party shall enjoy, in the Territory and in the maritime zones of the other contracting party; of a full protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies of the other party; investments in its territory and in the maritime area, except for a public purpose and provided that they are neither discriminatory nor contrary to a specific engagement as defined in article 9.

All dispossession measures that might be taken shall be subject to the payment of prompt and adequate compensation in an amount equal to the real value of the investment concerned must be assessed in relation to a normal economic situation

and prior to any threat of dispossession.

Such compensation, its amount and has no later than the date of dispossession. The compensation shall be paid without delay, and effectively realisable freely transferable. It produces until the date of payment, shall include interest at the market rate of interest.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

## **Article 6.**

The Contracting Party in the territory or maritime area in which the investments were made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Fees derived from the rights referred to in paragraph 1, subparagraphs (d) and (e) of article 1;
- c) Payments made for the reimbursement of loans contracted regularly;
- d) The proceeds of liquidation, the implementation of the total or partial or sale of the investment, including the value of the investment capital;
- e) Compensation for loss or dispossession provided for in article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the market rate of exchange applicable on the date of transfer.

## **Article 7.**

Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two parties to the dispute in question.

If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, it shall be submitted at the request of either of the parties to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965.

Unless one of the contracting parties is not a party to the said Convention, the dispute shall be settled by an ad hoc arbitration. the arbitral tribunal shall be constituted ad hoc as follows:

- a) Each Party to the dispute shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be chairman appointed by both parties. All members shall be appointed within two months from the date on which either Party has notified to the other party of its intention to submit the dispute to arbitration;
- b) If the time limits set out in subparagraph (a) above have not been made, either party, in the absence of any other agreement, invite the President of the International Chamber of Commerce in Paris to make the necessary appointments.
- c) The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and enforceable automatically to the parties.

The tribunal shall determine its own rules of procedure.

It interprets the award at the request of either of the Parties to the dispute. Unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally between the two parties to the dispute.

## **Article 8.**

1. If the legislation of either contracting party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory or maritime zones of the other party.
2. Investments of nationals and companies of one Contracting Party in the territory or maritime zones of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.
3. If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of the national or company.
4. Such payments shall not affect the rights of the holder of the security or to resort to the ICSID ad hoc arbitration tribunal established under article 7, or to continue its actions brought before them, until the end of the procedure.

## **Article 9.**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

## **Article 10.**

1. Disputes between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If, within a period of six months from the time at which it was raised by either contracting party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be appointed Chairman of the Tribunal by both contracting parties. All members shall be appointed within two months from the date one Contracting Party has informed 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 made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. The decisions shall be final and enforceable automatically to the contracting parties.

The tribunal shall determine its own rules of procedure. It interprets the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the contracting parties.

## **Article 11.**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

Done at Paris, on 11 October 1995 in two originals, each in the English and French languages, both texts are equally authentic.

For the Government of the French Republic: Jean Arthuis

For the Government of the Republic of South Africa: Mabo Mbeki