

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON PROMOTION AND RECIPROCAL INVESTMENT PROTECTION**

The Government of the Argentine Republic and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and "Party", individually):

Desiring to intensify economic cooperation between the two States.

In order to create favourable conditions for investments by investors of a Party in the territory of the other party.

Recognizing that the promotion and protection of such investment based on an agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Hereby agree as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

The term "investment" means, in accordance with the laws and regulations of the Party in whose territory the investment was made, every kind of assets invested by investors of one party in the territory of the other party, in accordance with the laws and regulations of the latter and includes in particular, though not exclusively:

- (a) Ownership of movable and immovable property as well as any other property rights, such as mortgage bonds, lien and rights;
- (b) Shares and social quotas and any kind of participation in companies;
- (c) Claims and rights to performance having an economic value, loans shall be included only when they are directly linked to a specific investment;
- (d) Intellectual property rights, including copyrights, patents, industrial designs, trademarks, trade names, processes, technical know-how and goodwill;
- (e) Economic concessions conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their quality of investment in accordance with this Agreement.

The term "investor" means:

- (a) Any natural person who is a national of the Parties in accordance with its legislation;
- (b) Any legal person constituted in accordance with the laws of a party and having its seat in the territory of that Party.

The term "proceeds" means all amounts yielded by an investment, such as interests, profits, dividends, royalties and other revenue streams, including capital gains.

The term "territory" means the territory of each party, including the territorial sea and any maritime areas adjacent to the outer limit of the territorial sea over which a party exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Investment Promotion**

1. Each Party shall promote investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws.
2. Each Party shall grant, in accordance with its laws, the necessary permits relating to such investments and the implementation of licensing agreements and contracts for commercial, administrative or technical assistance.
3. The nationals of each party and employees and their families, an investor of a Party may, subject to the laws of the other party to enter, stay and departure of the latter party appointed for the purpose of carrying out activities related to investments in the territory of that Party.

### **Article 3. Protection of Investments**

1. Each party shall at all times ensure fair and equitable treatment to investments by investors of the other Contracting Party and shall not hinder their management, maintenance, use, enjoyment or disposal thereof by unjustified or discriminatory measures.
2. Each Party, once admitted in its territory investments by investors of the other party shall accord to such investments full legal protection and they agree upon a treatment no less favourable than that accorded to investments made by its own investors or to investors of third States.
3. Notwithstanding the provisions of paragraph (2) of this article, most-favoured-nation treatment shall not apply to privileges which each party shall accord to investors of a third State because of its membership in or association with a free trade area, customs union, common market or regional agreement.
4. The provisions of paragraph (2) of this article shall not be construed as to oblige a party to extend to the investors of the other party the benefit of any treatment, preference or privilege resulting from any international agreement relating wholly or partially to taxation matters.

### **Article 4. Expropriation and Compensation**

1. Neither party shall directly or indirectly any measure of expropriation or nationalization or any other measures having equivalent effect in its territory against investments of investors of the other contracting party unless the measures are taken for a public purpose, which are not discriminatory, under due process of law, and accompanied by provisions for the payment of prompt, effective and adequate compensation. Such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation becomes public knowledge, shall include interest from the date of expropriation at a normal commercial rate shall be paid without delay and shall be effectively realizable and freely transferable.
2. Investors of one party whose investments in the territory of the other party suffer losses owing to war or other armed conflict, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of any third State.

### **Article 5. Transfers**

1. Each Party shall accord to investors of the other party the unrestricted transfer of investments and returns and in particular, though not exclusively, of:
  - (a) The principal and additional amounts necessary for the maintenance and development of the investment;
  - (b) Profits, dividends, interests and other current income;
  - (c) The funds in repayment of loans directly related to a specific investment;
  - (d) Royalties and fees;
  - (e) The proceeds from a total or partial sale or liquidation of an investment;
  - (f) The compensation provided for in article 4;
  - (g) The net earnings of nationals of one Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers shall be effected without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer in accordance with the procedures established by the Party in whose territory the investment was made, which shall not affect the substance of the rights under this article. In the absence of a market for foreign exchange, the rate of exchange shall not differ only marginally mutual rate of exchange rates that the International Monetary Fund (IMF) applied on the date on which the transfer was made, if changes money from interested countries in special drawing rights (SDRs).

## **Article 6. Subrogation**

1. If a party or its designated agency by a payment to any of its investors under a guarantee or an insurance contract with respect to an investment, the other party shall recognize the validity of the subrogation in favour of the first party or its designated agency of any right or title in respect of the investor.

The Party or its designated agency, within the limits of the subrogation shall be entitled to exercise the rights which the investor would have been entitled to exercise.

2. In case of subrogation took place under Paragraph (1), the investor shall not pursue a claim except with the permission of the party or its designated agency to do so.

## **Article 7. Implementation of other Rules**

If the legislation of either party or obligations under international law existing at present or hereafter established between the parties in addition to this Agreement or whether any agreement between an investor of one party and the other party contains rules whether general or specific empowered to investments of investors of the other contracting party to a more favourable treatment than that accorded by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

## **Article 8. Settlement of Disputes between the Parties**

1. Any dispute between the parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel through amicable consultations.

2. If a dispute between the Contracting Parties thus cannot be settled within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either party to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months after receipt of the request for arbitration, each party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval by the two parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months after the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this article the necessary appointments have been fulfilled, either Party may, in the absence of any other agreement, may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either party or is unable to perform this function, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is a national of either party or nor to perform this function, invite the member of the International Court of Justice to continue in seniority who is not a national of any of the Parties, to make the necessary appointment.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both parties. Each Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall in principle be borne in equal parts by the parties. The Tribunal may however, in its decision to establish that a higher proportion of costs be borne by one of the two parties, and this decision shall be binding on both parties. The tribunal shall determine its procedure.

## **Article 9. Settlement of Disputes between an Investor and the Host Party of the Investment**

1. Any dispute within the terms of this agreement between an investor and a party of the other Contracting Party shall be settled amicably, as far as possible.

2. If the dispute cannot thus be settled within six months following the date on which either party to the dispute shall be submitted, at the request of the investor:

- The competent court of the Party in whose territory the investment was made; or
- to international arbitration in accordance with the provisions of Paragraph 3.

In the event that an investor has or has agreed to submit a dispute to the competent court of the Party in which the investment is made or to international arbitration, the choice shall be final.

3. In the case of international arbitration, the dispute shall be submitted, at the choice of the investor:

- 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, once that both parties to this are members of the same. Failure to comply with this provision, each party consents to the dispute is submitted to arbitration under the ICSID Additional mechanisms for the administration of conciliation, arbitration procedures and research; or
- an arbitral tribunal established for each individual case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitral tribunal shall decide in accordance with the provisions of this Agreement and the legislation of the Party involved in the dispute, including its rules on the Conflict of Laws, the terms of any specific agreement concluded in relation to the investment and the relevant principles of international law.

5. The arbitral award shall be final and binding on the parties to the dispute. Each Party shall be implemented in accordance with its legislation.

## **Article 10. Scope**

This Agreement shall apply to all investments made before or after its entry into force, but the provisions of this Agreement shall not apply to any dispute or difference claim, which arose before its Entry into Force.

## **Article 11. Entry Into Force, Duration and Termination, Modification**

1. This Agreement shall enter into force on the first day of the second month following the date on which the parties have notified each other in writing that they have complied with the constitutional requirements for the Entry into Force of this Agreement. It will have a duration of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either party notifies the other party in writing of its decision to terminate it.

2. With respect to investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 10 shall remain in force for a further period of fifteen years from that date.

Done at Buenos Aires on 23 July 1998.

For the Government of the Argentine Republic

For the Government of the Republic of South Africa

## **PROTOCOL**

By signing the Agreement between the Government of the Argentine Republic and the Government of the Republic of South Africa for the Promotion and Reciprocal Protection of Investments, the undersigned agreed the following provisions, which constitute an integral part of the Agreement:

### **I. With Respect to Article 1, Paragraph 1:**

The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of the Republic of South Africa and are in the territory of the Argentine Republic if such persons had, at the time of the investment, domiciled in the Argentine Republic for more than two years, unless it is proved that the investment was admitted from abroad.

## **II. With Respect to Articles 4 Paragraphs 1 and 5:**

The provisions of this Agreement regarding transfers shall not apply to nationals of the Argentine Republic who have obtained permanent residency in the Republic of South Africa and who have decided to immigrate to the Republic of South Africa, completing the required form of exchange control, once there is expired a period of five years from the date of immigration.

This provision shall be without effect at the time when the Republic of South Africa withdraws the limitations of exchange control.

## **III. With Respect to Article 3:**

(i) The provisions of Paragraph 2 of Article 3 shall not be construed as extending to investors of the Republic of South Africa the benefit of treatment, preference or privilege resulting from the bilateral agreements stipulating concessional financing concluded by the Argentine Republic with the Republic of Italy, on December 10, 1987, and with the Kingdom of Spain on June 3, 1988.

(ii) If the Republic of South Africa agrees to special advantages for development-oriented financial institutions with foreign participation and created for the sole purpose of development assistance, but mainly for non-profit activities, the Republic of South Africa shall not be obliged to agree such benefits to other financial institutions of development or investors of the Argentine Republic.

## **IV.**

In order to create favorable conditions for the assessment of the financial situation and the results of activities relating to investments in the territory of a Party, that Party will allow - notwithstanding its own accounting and auditing requirements - that the investment be subject also to accounting and audits governed by rules to which the investor is subject based on their national requirements or internationally accepted standards (e.g., International Accounting Standards (IAS) established by the International Accounting Standards Commission (IASC)).

The result of such accounting and auditing will be freely transferable to the investor.

In witness whereof, the undersigned have signed this Protocol, in two originals in Spanish and English, both equally authentic.

Done at Buenos Aires on 23 July 1998.

For the Government of the Argentine Republic

For the Government of the Republic of South Africa