

# **AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE REPUBLIC OF SOUTH AFRICA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Czech Republic and the Republic of South Africa (hereinafter jointly referred to as the "Parties", and each in the singular as a "Party"),

Desiring to develop economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State, and

Conscious that the promotion and reciprocal protection of investments, in terms of the present Agreement, stimulates business initiatives in this field,

Hereby agree as follows:

## **Article I. Definitions**

For the purposes of this Agreement:

"investment" means every kind of asset invested in connection with economic activities by an investor of one Party in the territory of the other Party in accordance with the laws of the latter and shall include, in particular, though not exclusively:

- (a) Movable and immovable property as well as any other property rights such as mortgages, liens or pledges;
- (b) Shares, stocks and debentures of companies or any other form of participation in a company;
- (c) Claims to money or to any performance under contract having an economic value associated with an investment;
- (d) Intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;
- (e) Any right conferred by laws or under contract and any licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investments.

"investor" means any natural or legal person who invests in the territory of the other Party.

"natural person" means any natural person having the nationality of a Party in accordance with the laws of that Party.

"legal person" means, with respect to a Party, any entity incorporated or constituted in accordance with, and recognized as a legal person, by the laws of the Party, and having its seat in the territory of that Party.

"returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, interest related to loans, capital gains, shares, dividends, royalties or fees.

"territory" means —

With respect to the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

With respect to the Republic of South Africa the territory of the Republic of South Africa including the territorial sea and any maritime or submarine area within which the Republic of South Africa exercises, in accordance with international law,

sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of the sea-bed, subsoil and natural resources.

## **Article 2. Promotion and Protection of Investments**

1. Each Party shall encourage and create favourable conditions for investors of the other Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party.
3. Each Party shall grant, in accordance with its laws, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.
4. In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Party, that Party shall — notwithstanding its own requirements for bookkeeping and auditing — permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his or its national requirements or according to internationally accepted standards, (such as International Accountancy Standards (IAS) drawn up by the International Accountancy Standards Committee (IASC)). The results of such accountancy and audit shall be freely transferable to the investor.

## **Article 3. National and Most-favoured-nation Treatment**

1. Each Party shall in its territory accord to investments and returns of investors of the other Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.
2. Each Party shall in its territory accord to investors of the other Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third State.
3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of — paragraph 1 and 2 of this Article shall not be construed so as to oblige one Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of —
  - (a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Parties is or may become a party;
  - (b) Any international agreement or other arrangement relating wholly or mainly to taxation;
  - (c) Any law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, previously disadvantaged by unfair discrimination.

## **Article 4. Compensation for Losses**

1. Where investments of investors of either Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Party, such investors shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Party accords to its own investors or to investors of any third State.
2. Without prejudice to paragraph 1 of this Article, investors of one Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Party resulting from:
  - (a) Requisitioning of their property by the forces or authorities of the latter Party, or
  - (b) Destruction of their property by the forces or the authorities of the latter Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or just and adequate compensation for the losses sustained as a result of the requisitioning or the destruction of the property. Resulting payments shall be freely transferable in freely convertible currency without undue delay.

## **Article 5. Expropriation**

1. Investments of investors of either Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation, (hereinafter referred to as "expropriation"), in the territory of the other Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall at least be equal to the value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal commercial rate from the date of expropriation, shall be made without undue delay, be effectively realisable and be freely transferable in freely convertible currency.

2. The investor affected shall have a right to prompt review by a court of law or other independent and impartial authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

## **Article 6. Transfers**

1. Each Party shall guarantee investors of the other Party the free transfer of payments relating to their investments and returns, which shall include in particular, but 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 or fees;
- (e) Proceeds of sale or liquidation of the investment;
- (f) The earnings of natural persons subject to the laws and regulations of that Party where investments have been made;
- (g) Compensation paid pursuant to Articles 4 and 5. Articles 4 and 5.

2. All transfers shall be effected without undue delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

3. Transfers shall be considered to have been made "without undue delay" in the sense of paragraph (2) of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed two months. paragraph (2) of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed two months.

## **Article 7. Subrogation**

1. If a Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Party, the latter Party shall recognise:

- (a) The assignment, whether in terms of the law or pursuant to a legal transaction in the territory of the former Party, of any right or claim by the investor to the former Party or its designated agency, as well as,
- (b) That the former Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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

1. Any dispute which may arise between an investor of one Party and the other Party in connection with an investment in the territory of that other Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Party and the other Party cannot be thus settled within a period of six months

from written notification of a claim, the investor shall be entitled to submit the case either to:

(a) Competent courts or administrative tribunals of the Party which is the party to the dispute; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of 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, in the event both Parties shall have become a party to this Convention. 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, in the event both Parties shall have become a party to this Convention.

As long as this requirement is not met, each 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

(c) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

Such arbitral awards shall be final and binding on both parties to the dispute.

3. Each Party shall give effect to the award under its national law.

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

1. Disputes between the Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or negotiations.

2. If the dispute cannot be thus settled within six months following the date on which such consultations or negotiations were requested by either Party, it shall upon the request of either Party be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the 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 of the two Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from 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 not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the appointments.

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 cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Parties. The Arbitral Tribunal shall determine its own procedure.

## **Article 10. Application of other Rules and Special Commitments**

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Parties are parties, nothing in this Agreement shall prevent either Party or any of its investors who own investments in the territory of the other Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Party to investors of the other Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

## **Article 11. Applicability of this Agreement**

The provisions of this Agreement shall apply to future investments made by investors of one Party in the territory of the

other Party, and also to the investments existing in accordance with the laws of the Parties on the date this Agreement comes into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

## **Article 12. Entry Into Force, Duration, Termination and Amendment**

1. Each of the Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.
2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of fifteen years from the date of termination.

DONE in duplicate at Prague, this 14th day of December, 1998, in the Czech and English languages, both texts being equally authentic.

For the Czech Republic

For the Republic of South Africa

The Czech Republic and the Republic of South Africa

Have agreed at the signing of the Agreement between the Czech Republic and the Republic of South Africa for the Promotion and Reciprocal Protection of Investments upon the following provisions which shall form an integral part of the said Agreement:

Ad Article 6

1. The provisions for transfers of investments and returns as contemplated in Article 6 shall not apply in favour of permanent residents of South Africa who are subject to exchange controls in South Africa. Foreign nationals who are natural persons and who have resided in the Republic of South Africa for more than five years and who have completed the required exchange control formalities connected with immigration to South Africa, are, in terms of South African exchange control rules, deemed to have become permanently resident in the Republic 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 restriction 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 Protocol shall not apply to or restrict the transfer of compensation payments made pursuant to Articles 4 and 5 of this Agreement.
5. This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol in two originals in the Czech and English languages, all texts being equally authentic.

Done at Prague , on this 14th day of December, 1998

For the Czech Republic

For the Republic of South Africa