

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Angola and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and separately as a "Party");

DESIRING to create favourable conditions for greater investment by investors of either Party in the territory of the other Party, and

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiatives and will increase prosperity in the territories of both Parties;

HEREBY AGREE as follows:

Article 1. Definitions

in this Agreement, unless the context indicates otherwise-

- "investor" means in respect of either Party:

(a) the nationals of a Party, being those natural persons deriving their status as nationals of a Party from the domestic law in force in the country of that Party; and

(b) the companies of a Party being any 'legal person, corporation, firm or association incorporated or constituted in accordance with the domestic law in force in the country of that Party;

- "Investment" means every kind of asset 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 form of participation in a company;

(c) claims to money, or to any performance under contract having an economic 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; and

(e) rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

and any change in the legal form in which assets are invested or reinvested does not affect their character as investments under this Agreement.

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

"territory" means the entire territorial surface of the Republic of Angola and the Republic of South Africa respectively, which is internationally recognized, including the respective inland watercourses, territorial seas and exclusive economic zones, the continental shelf, and any maritime area situated beyond the territorial seas, as it exists currently or may come into existence in the future in accordance with the domestic law in force in the countries of the Parties and international law, as an area over which the Parties exercise sovereign rights or jurisdiction.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute, which arose before entry into force of this Agreement.

Article 3. Promotion of Investments

(1) Each Party shall, subject to its general policy in the field of foreign investment, encourage investments in its territory by investors of the other Party, and, subject to its right to exercise powers conferred by the domestic law in force in its country, shall admit such investments.

(2) Each Party shall grant, in accordance with the domestic law in force in 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.

(3) 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 according to internationally accepted standards. The results of such accountancy and audit shall be freely transferable to the investor.

Article 4. Treatment of Investments

(1) Each Party shall, in its territory, accord to investments and returns of investors of the other Party, treatment 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 country.

(2) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party

(3) Neither 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 of the other Party.

(4) Each Party shall, in its territory, accord to investors of the other Party treatment not less favourable than that which it accords to its own investors or to investors of any third country.

(5) The provisions to sub-Articles (1) and (4) shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from-

(a) any existing or future customs union, 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 Parties is or may become a party;

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(c) any domestic law or other measures 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, disadvantaged by unfair discrimination in its territory.

(6) If a Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Party shall not be obliged to accord such advantages to development fi finance institutions or other investors of the other Party.

Article 5. Compensation for Losses

(1) Investors of one Party whose investments in the territory of the other Party suffer losses owing to natural disasters, war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party shall be accorded by the latter Party a 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 country.

(2) Compensation for losses shall also be paid to investors of a Party who in any of the situations referred to in sub-Article

(1) 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 authorities of the latter Party, which was not caused in combat action or was not required by the necessity of the situation.

Article 6. Compensation for Expropriation

(1) Investments of investors of either Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

(2) The compensation referred to in sub-Article 1 shall-

(a) be equal to the market value of the investment expropriated immediately before the expropriation came into effect or before the impending expropriation became public knowledge, if this moment is earlier;

(b) include interest at normal commercial rates until the date of payment;

(c) be made without delay, and be effectively realisable.

(3) The investor affected by the expropriation shall have a right, under the domestic law in force in the country of the Party making the expropriation, to prompt review, by a court of law or other independent and impartial forum of that Party, of his or its case and of the evaluation of his or its investment in accordance with the principles referred to in sub-Articles (1) and (2).

Article 7. Transfers

(1) Each Party shall allow investors of the other Party the unrestricted transfer of payments relating to their investments and returns including compensation paid pursuant to Articles 5 and 6. Payments relating to their investments shall include, but shall not be limited to —

(a) the proceeds resulting from the total or partial alienation of the investment;

(b) additional capital needed to maintain or increase the investment.

(2) All transfers shall be effected without 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 currency, the rate to be used shall be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the domestic laws in force in the country where the investment has been made. Such domestic law shall not, however, regarding either the requirements or the application thereof, impair or derogate from the unrestricted and undelayed transfer allowed in terms of sub-Articles (1) and (2).

(4) The provisions relating to transfer of payments under this Article shall not apply to natural persons who are foreign nationals and who, after five years residence in South Africa or Angola have applied for permanent residency, and who, after having completed the required exchange control formalities in connection with immigration, are accordingly deemed in terms of exchange control rules to be permanent residents of South Africa and Angola.

(5) The exemption referred to in sub-Article (4) shall terminate automatically upon removal of the restriction of foreign exchange control on permanent residents of a Party from the domestic law in force in the country of the Party.

(6) The Parties shall make every effort to remove the said restriction from the domestic law in force in their countries as soon as possible.

(7) Sub-Article (4) shall not apply to or restrict the transfer of compensation payments made pursuant to Articles 5 and 6.

Article 8. Settlement of Disputes between an Investor and a Party

(1) Any legal dispute between an investor of one Party and the other Party relating to an investment of the former which has not been amicably settled shall, after a period of six months from written notification of a claim, be submitted to

international arbitration if the investor concerned so wishes.

(2) When a dispute contemplated in sub-Article (1) is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute either to -

(a) the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965, when each Party has become a party to said 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

(b) an international arbitrator or ad hoc arbitration tribunal to be established in terms of the Rules of Arbitration of the United Nations Commission on International Trade Law or by agreement between the parties to the dispute.

(3) if after a period of six months from written notification of the investor's decision to refer the dispute to international arbitration there is no agreement on one of the alternative procedures referred to in sub-Article (2), the dispute shall, at the request in writing of the investor concerned, be dealt with in terms of the procedure preferred by the investor.

(4) The award made by the arbitrator concerned in terms of sub-Articles (2). and (3) shall be binding on the parties to the dispute. Each Party shall give effect to the award under the domestic law in force in its country.

(5) The decision in resolution of the dispute shall be derived by application of the domestic law, including the rules relating to conflicts of law, in force in the country of the Party involved in the dispute in whose territory the Investment has been made, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment, as well as the principles of international law.

Article 9. Disputes between the Parties

Any dispute between the Parties concerning the interpretation or application of this agreement shall be settled through negotiations via the diplomatic channel.

Article 10. Subrogation

If a Party or its representative or the Agency it appoints makes a payment to its own investor resulting from an indemnification granted to an investment made in the territory of the other Party, the latter Party shall recognize-

(a) the assignment to the former Party, whether by law or by juridical act of all the rights and claims of the indemnified investor;

(b) that the former Party or its representative or its appointed Agency is entitled, by virtue of subrogation, to exercise such rights and enforce such claims to the same extent as the original investor.

Article 11. Application of other Rules

(1) If the provisions of the domestic law, except as provided for under Article 4 (5) (c), of the country of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain rules, whether general or special, entitling investments and returns of investors of the other 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 Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Party.

Article 12. Entry Into Force, Amendment and Termination

(1) This Agreement shall enter into force on the date on which the Parties have notified each other in writing through the diplomatic channel of their compliance with the constitutional requirements necessary for the implementation of this Agreement. The date of entry into force shall be the date of the last notification.

(2) This agreement shall remain in force for a period of ten years whereafter it may be renewed for succeeding periods of five (5) years. This renewal shall be made twelve (12) months before the expiration of the first ten year period and six (6) months before the expiration of the subsequent five year period.

(3) Either Party may, at any time, give notice of its intention to terminate this Agreement. In such a case, the Agreement shall continue in force until the expiration of twelve months from the date of the written notice of termination.

(4) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of Articles 1 to 11 remain in force with respect to such investments for a further period of twenty (20) years at date.

(5) The Government of the Republic of Angola declares, and the Government of the Republic of South Africa accepts, that the duration for effect of the Agreement after termination thereof, as provided for in sub-Article (4) is set at twenty (20) years as an exceptional circumstance for the Government of the Republic of Angola, that shall be applicable to the Government of the Republic of South Africa only and has no effect on other similar agreements concluded by the Government of the Republic of Angola with third Parties.

(6) This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement.

DONE at..... on this... day of Two thousand and Five in two original languages in the English and Portuguese both the texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF ANGOLA

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA