

Agreement between the Government of the People's Democratic Republic of Algeria and the Government of the Republic of South Africa on the Reciprocal Promotion and Protection of Investment

Preamble:

The Government of the People's Democratic Republic of Algeria and the Government of the Republic of South Africa, hereinafter referred to as the "Contracting Parties";

Desiring to enhance economic cooperation and to create conditions to promote investment between Algeria and South Africa; and

Convinced that the promotion and protection of investments will stimulate the release of capital, the flow of investment and transfer of technology between the two contracting parties in the interest of development and economic prosperity;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) "investment" means every asset and in particular, though not exclusively:

I. movable and immovable property and other property rights such as leasing, mortgages, liens or guarantees ;

II. shares, debentures and assessments of a company and any other form of participation in a company;

III. monetary claims or any performance under contract having an economic value;

IV. intellectual property rights, including copyrights, patents, invention designs, trademarks, trade names, trade and business secrets, technical processes, and know-how;

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

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

b) "investor" refers with regard to either Contracting Party:

I. nationals of a Contracting Party means natural persons who have their status as nationals of a contracting party from the law of that Party;

II. companies of a Contracting Party means any legal person, corporation, firm or association established or constituted in accordance with the law of that Contracting Party;

c) "Income" means the amounts yielded by an investment and in particular, though not exclusively, income from capital gains, profits, dividends, royalties;

d) "territory" means:

For the People's Democratic Republic of Algeria: in the geographical sense, the territory of the People's Democratic Republic of Algeria's, including the territorial sea and the areas in which, in accordance with international law and/or national legislation, the People's Democratic Republic of Algeria's exercises jurisdiction and sovereign rights for the purpose of the exploration and exploitation of natural resources of the seabed and subsoil and surface water.

For the Republic of South Africa: the territory of the Republic of South Africa, including the territorial sea and any maritime area situated beyond the territorial sea of South Africa which has been or might in the future be designated under the laws of the Republic of South Africa and in accordance with international law as an area within which the Republic of South Africa may exercise its sovereign rights and jurisdiction.

Article 2. Investment Promotion

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its territory by investors of the other Contracting Party and shall, subject to its domestic law, accept such investments.
2. Each Contracting Party shall grant, in accordance with its domestic law, the necessary authorizations relating to investments referred to in paragraph 1 of this article and the carrying out of licensing agreements and contracts for commercial, administrative, or technical assistance.

Article 3. Protection of Investments

- (1) Returns of investments and investors of either Contracting Party shall at all times benefit of fair and equitable treatment and full protection in the territory of the other Contracting Party. No Contracting Party shall impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.
- (2) Each Contracting Party shall accord in its territory to investments and returns of by investors of the other Contracting Party treatment no less favourable than that which it accords to its own investor's investment and returns or investment and returns of investors of any third State.
- (3) Each Contracting Party shall accord to investors in its territory of the other Contracting Party treatment no less favourable than that which it accords to its own investors to investors or of any third State.
- (4) The provisions of paragraphs 2 and 3 shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party any treatment, preference or privilege resulting from:
 - (a) Any customs union, free trade area, common market, or a similar agreement existing or future international agreement or any interim arrangement leading up to such free trade area, customs union or common market, to which either of the Contracting Parties is or may become a party,
 - (b) Any international agreement on arrangements relating wholly or partially to taxation or any domestic legislation relating wholly or partially to taxation, or
 - (c) Any law or other measure aimed at establishing the emergence of equality in its territory, or designed to protect or assist individuals or categories of persons disadvantaged by unfair discrimination in its territory.
- (5) If a Contracting Party accords special advantages to development finance institutions with foreign participation and solely for the purpose of development assistance, mainly through non-lucrative 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 4. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or any other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the latter Contracting Party, shall be accorded by that Contracting Party regards as restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State.
2. Without prejudice to paragraph 1 of this article, investors of one Contracting Party who, in any of the events referred to in that paragraph, suffer, in the territory of the other Contracting Party resulting from requisitioning of loss or damage to their property by its authorities will be entitled to fair and adequate compensation for the losses sustained during the period of the requisitioning or as a result of damage to their property.

Article 5. Nationalization or Expropriation

1. Investments made by investors of either Contracting Party shall not be nationalized or expropriated or subjected to

measures having effects equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other contracting party except for public purposes, under due process, on a non-discriminatory basis and against payment of prompt, fair and adequate compensation. Such compensation shall be at least equal to the market value immediately before the expropriation of the expropriated investment, or before the decided expropriation is made public, whichever occurs first, such compensation shall bear interest at the normal commercial rate up to the date of payment and shall be settled without delay and be effectively realizable.

2. The investor affected by the expropriation shall have a right, under the legal framework of the country of the Contracting Party which has decided the expropriation, to prompt review of its case and of the valuation of its investment by a court of law or other independent and impartial judicial body of the Contracting Party, in accordance with the principles referred to in paragraph 1 of this article.

Article 6. Transfer

1. Each Contracting Party shall permit investors of the other Contracting Party which have fulfilled all their tax obligations to freely transfer payments relating to their investments and returns, including compensation paid pursuant to articles 4 and 5.

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 exchange, the rate to be used will be the most recent exchange rate applied to domestic investments, provided that in the absence of an exchange rate for investments are to be used on the most recent exchange rate for conversion of currencies into Special Drawing Rights.

3. The transfers shall be made in accordance with the applicable laws of the country. Such law shall not, as regards their requirements and their application in the transfer, impair or derogate from the principle of a transfer freely and without delay as authorized under the terms of paragraphs 1 and 2 of this article.

4. The provisions for transfers and returns of investments referred to in this Article shall not apply in favour of Algerian nationals who have obtained the South African or permanent residence in one of the two countries.

5. The restrictions referred to in paragraph 4 shall be automatically lifted after their annulment by the domestic laws of Algeria and South Africa, as the case may be.

Article 7. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party relating to investments, shall as far as possible, be settled amicably between the parties concerned.

2. If such a dispute cannot be settled amicably within six (6) months from the date of the written notification of the dispute shall be submitted, at the request of the investor, either to the competent court of the Contracting Party involved in the dispute or to international arbitration. The choice of one of these procedures is final.

3. Where a dispute is submitted to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to submit it to either:

(a) The International Centre for Settlement of Investment Disputes (taking into account, where appropriate, the provisions of 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 and the Additional Facility for the administration of conciliation, arbitration and fact-finding); or

(b) An ad hoc arbitral tribunal constituted for each individual case in the following way: each party to the dispute shall appoint one arbitrator and the two arbitrators shall in turn select a third arbitrator who shall be a national of a third State and be appointed Chairman of the Tribunal. The arbitrators shall be appointed within two months (2) and the Chairman within three (3) months from the notification to the Contracting Party concerned, of the investor's decision to refer the dispute to arbitration.

(c) If within the periods specified in paragraph (b) the appointments of arbitrators have not been made, either Contracting Party involved in the dispute may invite the President of the arbitration body of the Stockholm Chamber of Commerce, to make the necessary appointments.

(d) The ad hoc tribunal shall determine its own rules of procedures within the framework of the Arbitration Rules of the United Nations Commission on International Trade Law.

4. If after a period of three (3) months from the date of written notification of the investor to resort to international

arbitration there is no agreement on one of two (2) procedures referred to in paragraph 3 of this article, the dispute shall, at the request in writing of the investor concerned, in accordance with the procedure preferred by the investor.

5. The arbitral tribunal shall address the dispute in accordance with the domestic law of the Party in whose territory the investment has been made to the other generally recognized principles of international law, to this Agreement and any other agreements on investment agreement between the investor and the Party concerned.

6. The decision to settle the dispute shall be based on the application of the national law, including the rules on conflict of laws, of the country of the Contracting Party involved in the dispute in whose territory the investment was made, the provisions of this Agreement, the terms of any specific agreement that may have been concluded in respect of the investment, and the principles of international law.

7. The arbitral award made under this article shall start the parties to the dispute and shall be enforceable in the territories of the Contracting Parties.

8. Neither Contracting Party shall pursue, through diplomatic channels, a dispute submitted to international arbitration, except in the event of non-compliance or non-enforcement by the other Contracting Party of the award rendered by the said Arbitral Tribunal.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible, be settled amicably through negotiations between the contracting parties.

2. If a dispute cannot be settled within a period of six (6) months from the date when either Contracting Party requested negotiations pursuant to paragraph 1 of this article, the dispute may be submitted at the request of either Contracting Party to an arbitral tribunal.

3. The Tribunal envisaged in paragraph 2 of this article shall be constituted for each individual case in the following way: Each Contracting Party shall appoint one member and these two members shall appoint a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman. The members of the Tribunal shall be appointed within two (2) months after the date on which either of the Contracting Parties has notified to the other contracting party of its intention to submit the dispute to arbitration.

4. In the event of non-compliance with the periods specified in paragraph 3 of this article, and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or is unable to perform this function for any reason, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is also prevented from carrying out the function, the said member 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.

5. An arbitral tribunal shall take its decision by a majority of votes and that decision shall start the two contracting parties.

6. The tribunal shall determine its own rules of procedures and deems the dispute on the basis of this Agreement and the principles of international law.

Article 9. Subrogation

1. If one Contracting Party or its designated agency makes a payment to one of its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment by law or by legal transaction, at the first party of all the rights and claims of the investor indemnified.

2. It shall also recognize that the Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the investor.

Article 10. Specific Obligations

1. If the provisions of the national law of each Contracting Party or the obligations under international law currently existing or defined hereinafter between the Contracting Parties in addition to this Agreement, contain rules, whether general or specific, allowing for the investments and income of the investors of the other Party; and the contracting party to benefit

from more favourable treatment than that provided for by the this Agreement, the said rules shall prevail over this Agreement to the extent that they will be more favourable.

2. Investments which are covered by a specific agreement between one of the Contracting Parties and an investor of the other Contracting Party shall be governed by the provisions of this Agreement to the extent that they are more favourable than those contained in this Agreement.

Article 11. Scope of Application

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. However, this Agreement shall not apply to disputes which occurred prior to its entry into force.

Article 12. Final Provisions

1. The Contracting Parties shall notify in writing when their respective constitutional procedures for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the date of receipt of the last notification.

2. This Agreement shall remain in force for an initial period of ten (10) years. It shall remain in force unless terminated by either Contracting Party by diplomatic channels and with one year's notice.

3. The parties may amend this Agreement by mutual consent. Any amendment shall enter into force on the same terms and conditions as those required for the entry into force of this Agreement.

4. Investments made prior to the termination of this Agreement shall continue to enjoy the protection of its provisions for a further period of fifteen (15) years from the date of expiry.

In WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Algiers on 24 September 2000 in two (2) originals in Arabic and English languages, both texts being equally authentic.

For the Government of the People's Democratic Republic of Algeria

Abdelaziz BELKHADEM

Minister of State, Minister of Foreign Affairs

For the Government of the the Republic of South Africa

Nkosazana Clarice DLAMINI Zuma

Minister of Foreign Affairs