

No. 45049*

**South Africa
and
United Nations Industrial Development Organization**

Agreement between the Government of the Republic of South Africa and the United Nations Industrial Development Organization on establishing a Sub-Regional Office in South Africa (with annex). Pretoria, 19 April 2006

Entry into force: *19 April 2006 by signature, in accordance with article 14*

Authentic texts: *English*

Registration with the Secretariat of the United Nations: *South Africa, 18 June 2008*

**Afrique du Sud
et
Organisation des Nations Unies pour le développement industriel**

Accord entre le Gouvernement de la République sud-africaine et l'Organisation des Nations Unies pour le développement industriel sur l'établissement d'un Bureau sous-régional en Afrique du Sud (avec annexe). Pretoria, 19 avril 2006

Entrée en vigueur : *19 avril 2006 par signature, conformément à l'article 14*

Textes authentiques : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 18 juin 2008*

* *The text reproduced below is the original text of the agreement as submitted. For ease of reference, it was sequentially paginated. The final UNTS version of it is not yet available. Le texte reproduit ci-dessous est le texte authentique de l'accord tel que soumis pour enregistrement. Pour référence, il a été présenté sous forme de la pagination consécutive. La version finale RTNU n'est pas encore disponible.*

[ENGLISH TEXT – TEXTE ANGLAIS]

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PREAMBLE

The Government of the Republic of South Africa (hereinafter referred to as "the Government") and the United Nations Industrial Development Organization (hereinafter referred to as "UNIDO"),

WHEREAS the Republic of South Africa is a member of UNIDO,

AND WHEREAS by its resolution GC.7/Res.11 of 4 December 1997 the General Conference of UNIDO urged donor countries to contribute generously to the financing of field representation and urged beneficiary countries to finance the sub-regional offices in a manner proportionate to their means and resources,

AND WHEREAS the Government and UNIDO recognize the importance of establishing a UNIDO Sub-Regional Office to enhance its cooperation at the country level in the sub-region constituted by Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Republic of South Africa, Swaziland, Zambia and Zimbabwe and has confirmed its commitment to contribute to certain costs of the UNIDO Sub-Regional Office as detailed further in this Agreement,

AND WHEREAS UNIDO has decided to establish a UNIDO Sub-Regional Office in Pretoria, Republic of South Africa,

AND WHEREAS the Convention on the Privileges and Immunities of the Specialized Agencies, 1947 which the Republic of South Africa has undertaken to apply to UNIDO in accordance with Section 43 thereof,

NOW THEREFORE UNIDO and the Government of the Republic of South Africa hereby agree as follows:

ARTICLE 1
Definitions

Section 1

In this Agreement the expression:

- a. "appropriate Republic of South Africa authorities" means such national or other authorities in the Republic of South Africa as may be responsible in the context and

in accordance with the laws and customs applicable in the Republic of South Africa;

- b. "archives of UNIDO" includes all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by UNIDO, wherever located in furtherance of its constitutional functions;
- c. "Convention" means the Convention on the Privileges and Immunities of the Specialized Agencies approved by the United Nations General Assembly on 21 November 1947;
- d. "Country" means the Republic of South Africa;
- e. "Director" means the UNIDO Field Representative and Sub-Regional Director;
- f. "experts" means any persons, other than representatives to and officials of UNIDO, who are performing missions for UNIDO in the Country and are specifically authorized by UNIDO, including persons doing so on an uncompensated or seconded basis, or serving on committees or other subsidiary bodies of UNIDO at the request of UNIDO;
- g. "Government" means the Government of the Republic of South Africa;
- h. "officials of UNIDO" means the Director and other staff members appointed by the Director-General of UNIDO in accordance with the regulations, rules and procedures of UNIDO and who are assigned or on mission to the Sub-Regional Office, with the exception of persons who are locally recruited and are assigned to hourly rates;
- i. "Parties" means the Government and UNIDO;
- j. "property and assets" means, as regards the Sub-Regional Office, all property, including funds, incomes and other assets, belonging to or administered by UNIDO in furtherance of its constitutional functions;
- k. "representatives of members" shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations of UNIDO Member States;
- l. "the dti" means the Department of Trade and Industry of the Government of the Republic of South Africa;

- m. "sub-region" means the countries in Southern Africa including but not limited to Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Republic of South Africa, Swaziland, Zambia and Zimbabwe;
- n. "Sub-Regional Office" means the UNIDO Sub-Regional Office in Pretoria, Republic of South Africa;
- o. "telecommunications" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means;
- p. "UNIDO" means the United Nations Industrial Development Organization and all references to UNIDO in connection with the privileges, immunities and facilities provided by the Government pursuant to Articles 2 and 4 to 11 of this Agreement shall be understood to refer to the activities of UNIDO's Sub-Regional Office as set forth in Article 3 of this Agreement.

ARTICLE 2

Establishment of a UNIDO Sub-Regional Office in South Africa

Section 2

- a. UNIDO is hereby authorised by the Government to establish a Sub-Regional Office in Pretoria, Republic of South Africa.
- b. The Sub-Regional Office will be responsible for programmes in the sub-region.
- c. South Africa and UNIDO will together build capacity for industrial development in the sub-region and in this regard the Government will work in partnership with UNIDO to ensure that national and sub-regional programmes are finalised.
- d. The Government, through the dti, will assist UNIDO with the establishment of the Sub-Regional Office by providing the resources set forth in the attached Annex, which is an integral part of this Agreement.

Section 3

UNIDO shall enjoy in the furtherance of the official functions of the Sub-Regional Office treatment not less favourable than that accorded to other organisations of the United Nations in the Country. The Sub-Regional Office shall have the right to display UNIDO's flag on the premises of the Sub-Regional Office and vehicles.

ARTICLE 3

Functions of the Sub-Regional Office

Section 4

The Sub-Regional Office shall be responsible for providing technical support and advice in the priority areas shared by the countries of the sub-region and in respect of all the countries included in the sub-region. It will address issues of sub-regional concern in the area and analyse industrial development issues with sub-regional dimensions and suggest appropriate measures for technical or project assistance. It will interact with the multilateral development and financing institutions operating in the sub-region, undertake dialogue and negotiations with Member States on behalf of UNIDO, carry out sub-regional-level funds mobilisation and undertake monitoring and co-ordinating functions as may be prescribed from time to time.

Section 5

The Sub-Regional Office shall further perform the functions of a UNIDO Country Office in the Country and in other countries of the sub-region as agreed upon between the Government and UNIDO.

Section 6

The Sub-Regional Office shall be headed by a Director. In the performance of his/her duties the Director shall:

In accordance with field representation policy and procedures, and in co-ordination with Headquarters:

- a. Act as accredited representative of UNIDO in the countries of the sub-region as well as UNIDO representative for important international/regional organisations located in such countries;

- b. Promote UNIDO's services in the countries of the sub-region;
- c. Develop a national and regional strategic framework of cooperation, annual work programme and active partnerships between the countries of the sub-region and UNIDO; fruitful relationships and communication with host government(s), business associations, enterprises, non-governmental organisations, all other United Nations (UN) agencies and the Resident Co-ordinator of the UN system, and representatives of other multilateral and bilateral organisations;
- d. Lead and co-ordinate the overall programme and project development and mobilise financial resources in the countries of the sub-region;
- e. Support, monitor, and contribute to the management of all other UNIDO activities in the countries of the sub-region;
- f. Implement projects and provide advice within criteria established;
- g. Manage the multidisciplinary team located in the Sub-Regional Office in order to provide high-quality technical support to other UNIDO field offices and UNIDO programmes in the sub-region;
- h. Lead the development (and possible implementation) of UNIDO programmes and activities at the sub-regional level, in close co-operation with other UNIDO representatives of the sub-region and Headquarters;
- i. Ensure that the Sub-Regional Office operates as a node for the UNIDO sub-regional information network;
- j. Promote positive interaction and cross-fertilisation between UNIDO sub-regional or regional institutions located in the sub-region, including funds mobilisation from development financing institutions;
- k. Inform/advise UNIDO Headquarters on changing patterns of demand at the sub-regional level; and
- l. Manage the Sub-Regional Office and its resources and ensure its sustainability, in particular through the mobilisation of the Country's in-kind and financial contributions.

Section 7

The dti and UNIDO shall agree on the mechanisms for the facilitation and implementation of projects undertaken in accordance with this Agreement.

ARTICLE 4
Inviolability of the Sub-Regional Office

Section 8

- a. UNIDO, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Director-General of UNIDO has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution for which a separate waiver shall be necessary.
- b. The premises of the Sub-Regional Office shall be inviolable. The property and assets of UNIDO in the Country, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- c. No officer or official of the Country or person exercising any public authority within the Republic of South Africa shall enter the Sub-Regional Office to perform any duties therein except with the express consent of and under conditions approved by the Director of the Sub-Regional Office. Such permission may, however, be presumed in the event of fire or life-threatening emergency requiring immediate and urgent action.
- d. The Sub-Regional Office shall not be used in any manner incompatible with the objectives and functions of UNIDO.

Section 9

The archives of UNIDO, and in general all documents belonging to UNIDO or held by it, shall be inviolable, wherever located in the Country.

ARTICLE 5
Exemption from Taxation

Section 10

UNIDO, its assets, income and other property in the Country shall be exempt from all direct taxes, however, UNIDO will not claim exemption from taxes which are, in fact, no more than charges for public utility services.

Section 11

UNIDO, its assets, income and other property in the Country shall be exempt from customs duties and prohibitions and restrictions on articles imported into the Country or exported from the Country for its official use, including publications. It is understood, however, that articles imported under such exemption will not be sold in the Country except under conditions agreed to with the Government.

Section 12

While UNIDO will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property in the Country which form part of the price to be paid, nevertheless when UNIDO makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 6
Financial Transactions

Section 13

Without being restricted by financial controls, regulations or moratoria of any kind, UNIDO may:

- (i) hold funds and currency of any kind in the Country and operate accounts in any currency in the Country; and
- (ii) freely transfer its funds and currency to and from as well as within the Country and convert any currency held by it into any other currency.

ARTICLE 7
Communications

Section 14

UNIDO shall enjoy, for its official communications, treatment not less favourable than that accorded by the Government to any other government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 15

- a. No censorship shall be applied to the official correspondence and other official communications of UNIDO.
- b. UNIDO shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.
- c. Nothing in this Section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Government and UNIDO.

ARTICLE 8
Officials of UNIDO

Section 16

The Government shall accord to officials of UNIDO the privileges and immunities set forth in Article VI, Sections 19 and 20 of the Convention. In addition, the Director of the Sub-Regional Office, including any official acting on his behalf during his absence from duty, and any official of UNIDO assigned to the Sub-Regional Office having the rank P-5 and above, shall be accorded the privileges and immunities, exemptions and facilities as Ambassadors who are heads of mission.

Section 17

For the purposes of this Agreement the term "spouses and relatives dependent on" as utilised in Section 19(c) and (e) of the Convention shall mean:

- (i) the spouse;
- (ii) any unmarried child under the age of 21 years;
- (iii) any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an education institution; and
- (iv) any other unmarried child or other family member officially recognised as a dependant member of the family by the United Nations

and who is issued with a diplomatic or official passport or the United Nations *laissez-passer*.

Section 18

Privileges and immunities are granted to officials of UNIDO in the interests of UNIDO only and not for the personal benefit of the individuals themselves. The Director-General of UNIDO shall have the right and the duty to waive the immunity of any official in any case where, in his/her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of UNIDO.

Section 19

UNIDO shall co-operate at all times with the appropriate Republic of South Africa authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned or referred to in this Article.

ARTICLE 9
Representatives of Members

Section 20

Representatives of members of UNIDO at meetings convened by the Sub-Regional Office shall, while exercising their

functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities as set out in Article V, Sections 13, 14 and 15 of the Convention.

ARTICLE 10

Experts on Mission for UNIDO

Section 21

Experts, other than officials of UNIDO, performing missions for UNIDO in the Country shall be accorded the privileges and immunities as set out in Annex XVII of the Convention.

ARTICLE 11

Laissez-Passer

Section 22

Officials of UNIDO shall be entitled to use the United Nations *laissez-passer* in conformity with administrative arrangements concluded with the Secretary-General of the United Nations. The Government shall recognize and accept the United Nations *laissez-passer* issued to officials of UNIDO as valid travel documents.

Section 23

Applications for visas, where required, from officials of UNIDO holding the United Nations *laissez-passer* shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 24

Similar facilities to those specified in Section 23 of this Agreement shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling to the Country on the business of UNIDO.

ARTICLE 12

Amendment

Section 25

This Agreement may be amended by written agreement between the Parties hereto. Each Party shall give full

consideration to any proposal advanced by the other Party under this Section.

ARTICLE 13
Settlement of Disputes

Section 26

Any dispute between the Parties arising out of or relating to the interpretation or application of this Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. For the purposes of the implementation of this Section:

- a. Each Party shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third, who shall be chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator;
- b. The procedure of the arbitration shall be fixed by the arbitrators. A majority vote of the arbitrators shall be sufficient to reach a decision, including decisions on procedural matters, which shall be final and binding;
- c. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute; and
- d. The expenses of arbitration shall be borne by the Parties as laid down in the arbitral award.

ARTICLE 14
Entry into Force, Duration and Termination

Section 27

- a. This Agreement shall enter into force upon signature thereof.
- b. This Agreement shall remain in force for a period of three years, after which it shall be renewed automatically for similar periods unless terminated by either Party in accordance with sub-Section 27(c) of this Agreement.

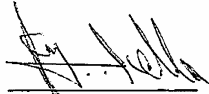
- c. This Agreement may be terminated by either Party at any time by written notice to the other and shall cease to be in force ninety (90) days after receipt of such notice, except to the extent necessary to permit orderly withdrawal of the property, funds and assets of UNIDO and officials of UNIDO by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly appointed representatives of the Parties, respectively, have signed this Agreement in duplicate in English.

DONE at Pretoria, Republic of South Africa this 19th day of April, 2006.



Mandisi Mphahlela
Minister of Trade and Industry



Kandeh Yumkella
Director- General of UNIDO

FOR AND ON BEHALF OF
THE GOVERNMENT OF
THE REPUBLIC OF
SOUTH AFRICA

FOR AND ON BEHALF
OF THE UNITED
NATIONS INDUSTRIAL
DEVELOPMENT
ORGANIZATION

ANNEX

**Assistance by the Government in the establishment of the
UNIDO Sub-Regional Office**

1. On the understanding that the Sub-Regional Office will perform functions for the Region as a whole the Government, through the dti, shall assist UNIDO with the establishment of the Sub-Regional Office by providing the premises and resources as set out in this Annex for a period of five years from the entry into force of this Agreement. After a period of 5 years the Parties will review the provision of premises and resources taking into consideration both Parties' policies and practices in this regard.
2. For the period that the dti provides office space to the Sub-Regional Office the following shall be provided by the dti:
 - (i) adequately furnished rooms to serve as office space;
 - (ii) computers, including basic software;
 - (iii) installation of telecommunications lines;
 - (iv) adequate parking spaces allocated to the Sub-Regional Office;
 - (v) adequate maintenance of and repairs to the office and furniture provided by the dti.
3. It is understood, however, that the dti shall not be responsible for the staffing and salary requirements of the Sub-Regional Office and the day to day office expenses, including costs of telephone calls, security (over and above that provided by the dti for the premises as a whole); transport costs; stationary and office supplies.
4. For the purpose of meeting its obligations as set forth in paragraph 2 of this Annex, the dti shall, with the consent of and under conditions approved by the Director of the Sub-Regional Office, be given reasonable admission to the premises as required to carry out maintenance and repairs and provided always that the dti in so doing shall not interfere with the Sub-Regional Office in its use and occupation of the premises more than it is reasonably necessary to effect such maintenance and repairs and shall make good any damage caused thereby.
5. While utilising the office space provided by the dti, UNIDO may display signage and the UNIDO flag, as agreed with the dti.

6. UNIDO shall not attach fixtures on the premises except with the consent of the dti, which consent shall not unreasonably be withheld.