

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATIONS

NO. 640

24 JULY 2015

AGREEMENT

between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

and

THE EUROPEAN INVESTMENT BANK

**REGARDING THE ACTIVITIES OF THE EUROPEAN INVESTMENT BANK AND THE ESTABLISHMENT
AND OPERATION OF ITS REGIONAL OFFICE
IN THE TERRITORY OF THE REPUBLIC OF SOUTH AFRICA**

PREAMBLE

The European Investment Bank (hereinafter referred to as the "Bank" or the "EIB"), the financing institution of the European Union created by the Treaty of Rome signed on 25 March 1957, on the one part, and the Government of the Republic of South Africa (hereinafter referred to as the "Government"), on the other part (collectively hereinafter referred to as the "Parties", each of them a "Party");

RECALLING that the EIB has been providing finance to investment projects in the Republic of South Africa since 1995;

HAVING REGARD to the agreement between the Members of the African, Caribbean and Pacific Group of States, including the Republic of South Africa, on the one part, and the European Community and its Member States, on the other part, signed in Cotonou on 23 June 2000, as subsequently amended (hereinafter referred to as the "Cotonou Partnership Agreement");

WHEREAS the Framework Agreement dated 22 June 2000 for financial co-operation between the Republic of South Africa and the EIB already lays down provisions to ensure certain rights and privileges for the Bank and its Officials and Employees in the Republic of South Africa;

WHEREAS in May 2003 the EIB decided to establish a regional representation office in Pretoria to further the objectives of the Cotonou Partnership Agreement and the Framework Agreement in the Southern African region; such office was subsequently opened in April 2005;

WHEREAS through its letter dated 3 November 2004, the Government specified further the privileges and immunities accorded to the Regional Office and its Officials and Employees;

DESIROUS of further strengthening and developing the relations and co-operation between the Republic of South Africa and the EIB;

WISHING to lay down by this Agreement additional terms concerning the privileges and immunities of the Bank and its personnel, in particular those assigned to carry out tasks in the Republic of South Africa;

HAVE AGREED as follows:

**Article 1
Definitions**

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings ascribed thereto below:

- (a) "Archives of the Regional Office" means all records, correspondence, documents and other materials, including manuscripts, still and moving pictures and film recordings, computer programs and written materials, video tapes and discs, as well as discs or tapes containing data belonging to or held by or on behalf of the Regional Office;
- (b) "Bank" or the "EIB" means the European Investment Bank including, unless otherwise stated, the Regional Office;

- (c) "Cotonou Partnership Agreement" means the agreement between the Members of the African, Caribbean and Pacific Group of States, on the one part, and the European Community and its Member States, on the other part, signed in Cotonou on 23 June 2000, as subsequently amended;
- (d) "Deputy Head of Regional Office" means the executive official of the Regional Office, appointed by the Bank, including any official appointed to act on the executive official's behalf during his absence from duty;
- (e) "Framework Agreement" means the Agreement for financial co-operation between the Republic of South Africa and the EIB, signed in Durban on 22 June 2000, as it may be amended from time to time;
- (f) "Government" means the Government of the Republic of South Africa;
- (g) "Head of Regional Office" means the principal executive official of the Regional Office, appointed by the Bank, including any official appointed to act on the principal executive official's behalf during his absence from duty;
- (h) "Laws of the Republic of South Africa" includes the Constitution of the Republic of South Africa and legislative acts, decrees, regulations and orders issued by, or under authority of, the Government or any appropriate authority in the Republic of South Africa;
- (i) "Letter of 3 November 2004" means the letter dated 3 November 2004 addressed by the Ambassador of the Republic of South Africa to the EU to the EIB President regarding the privileges and immunities accorded by the Government to the Regional Office and the Officials and Employees of the Regional Office;
- (j) "Meetings" means meetings of the Bank or the Regional Office, including any international conference or other gathering convened by the Bank or the Regional Office, and any commission, committee or subgroup of any such meetings;
- (k) "Members of the Family" means (i) the spouse, (ii) any dependant child under the age of 18 years, (iii) any other dependant family member, officially recognised as such by the Bank and (iv) the life partner, officially recognised as such by the Bank;
- (l) "Members of the household staff" means persons, other than nationals of the Republic of South Africa, employed as domestic staff of Officials and Employees of the Regional Office;
- (m) "Officials and Employees of the Bank" means all personnel of the Bank, including the Officials and Employees of the Regional Office, members of the Bank's Board of Directors, the Management Committee and the Audit Committee;
- (n) "Officials and Employees of the Regional Office" means officials and employees of the Bank assigned by the Bank to serve at the Regional Office, including staff recruited on Local Terms but excluding those assigned to hourly rates;
- (o) "Premises" and the "Premises of the Regional Office" means the buildings and parts of buildings and land, irrespective of ownership, used for the official purposes of the Regional Office;
- (p) "Property and assets of the Regional Office" means all property and assets vested by the Bank in the Regional Office or acquired by the Regional Office in the Republic of South Africa;
- (q) "Recruitment on Local Terms" means recruitment made by the Bank or the Regional Office under separate instruments provided for the employment of personnel outside the principal office of the Bank;
- (r) "Regional Office" means the Office of the Bank in the Republic of South Africa and includes the principal office in Pretoria, and any additional offices that may be established with the agreement of the Government at other locations in the Republic of South Africa.



Article 2
Functions of the Regional Office

The functions performed by the Regional Office concern all activities carried out by the Bank, pursuant to its Statute, in the Southern Africa and Indian Ocean regions, conforming to the aims of the Cotonou Partnership Agreement, the Framework Agreement and the EIB's objectives in general, in accordance with European Union policies.

Article 3
Legal Status and Treatment of the Bank

In addition to the provisions set forth in this Agreement, the legal status and treatment of the Bank on the territory of the Republic of South Africa are defined in the Framework Agreement.

Article 4
Certain Immunities of the Bank

1. The Property and assets of the Regional Office, wherever located and by whomsoever held, shall be immune from every form of legal process except in so far as in any particular case immunity has been expressly waived by the Bank. It is, however, understood that no waiver of immunity shall extend to any final, non appealable, measure of execution, rendered by a court of competent jurisdiction.
2. The property and assets of the Bank and of the Regional Office, wherever located and by whosoever held, shall enjoy immunity from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Article 5
Premises of the Regional Office

1. In addition to the principal office in Pretoria, the Bank with the agreement of the Government may establish additional offices at other locations in the Republic of South Africa.
2. The Bank shall make known to the Government the location of the Regional Office which may at the Bank's discretion be placed either separately from or within, the European Union Delegation to the South Africa or any other international organization having an office in Pretoria.
3. The Government shall, at the request of the Bank, make arrangements in such manner as may be agreed upon in supplemental agreements for the use or acquisition by the Bank of appropriate premises necessary for its functions.
4. The Regional Office shall be headed by a Head of Regional Office and shall be staffed with such other personnel appointed or assigned by the Bank.
5. The Regional Office shall be entitled to display the flag and the emblem of the Bank and of the European Union on its Premises, including the residence of the Head of Regional Office and on the motor vehicle of the Head of Regional Office.

Article 6
Inviolability of the Premises

1. The Premises of the Regional Office, wherever located and by whomsoever held, shall be inviolable and shall be under the exclusive control and authority of the Bank.
2. The Bank shall have the power to make rules and regulations operative within the Regional Office for the full and independent exercise of its activities and performance of its functions.



3. The Archives of the Regional Office, wherever located and by whomsoever held, shall be inviolable.
4. No officer or official of the Government or person exercising any public authority in the Republic of South Africa be they administrative, judicial, military or police shall enter the Premises of the Regional Office to perform any duties therein except with the express authorization from or on express request by the Bank or the Head of Regional Office. The Head of Regional Office's consent to such entry may be assumed in the event of fire or other analogous emergency requiring urgent action. The circumstances and the manner in which any such authority may enter the Premises of the Regional Office in connection with the prevention of fire or other analogous emergency shall be agreed with the Government by the EIB.
5. Without prejudice to the provisions of this Agreement, the Bank shall prevent the Premises of the Regional Office from becoming a refuge from justice for persons seeking to avoid arrest or service of legal process under the Laws of the Republic of South Africa. Without prejudice to the provisions of this Agreement, the Bank and the Officials and Employees of the Bank shall respect the Laws of the Republic of South Africa.

**Article 7
Public Services and Security**

1. The Regional Office shall receive the level of treatment, in terms of service delivery by the relevant local authorities of necessary public services and utilities, which is most favoured in respect of any such treatment provided to any other international organization accredited to the Republic of South Africa.
2. The Regional Office shall receive the level of security and protection provided to most favoured international organization accredited to the Republic of South Africa.

**Article 8
Exemption from Taxation**

1. The Bank, its assets, property, income and the activities and transactions carried out in accordance with its Statute shall be exempt from all forms of direct and indirect taxation, it being understood, that the Bank will not claim exemptions from taxes which are, in fact, no more than charges for public utility services paid by other international organizations established in the Republic of South Africa. The EIB shall also be immune from liability for the collection or withholding of any tax or duty.
2. The Bank shall be exempt from all customs duties, prohibitions and restrictions on goods and articles, including motor vehicles and spare parts, publications, films, still and moving pictures, imported or exported for its official purposes. It is understood, however, that articles imported under such exemption will not be sold in the Republic of South Africa except under conditions agreed to with the Government.
3. While the Bank will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Bank makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

**Article 9
Financial Transactions**

The Bank may hold and use funds or negotiable instruments of any kind. The Government recognizes the right of the Bank to maintain and operate accounts in any currency and convert any currency held by it into any other currency. The Bank may, freely transfer its funds into South Africa and may also, at any time, freely transfer all or part of the balance thereof out of South Africa, through a non-resident bank account, which for that purpose, may be switched into any foreign currency.



Article 10
Freedom of Meeting and Discussion

The Bank shall have the right to convene meetings in the Premises of the Regional Office, and at other locations in the territory of the Republic of South Africa. Prior to any official meeting involving participation of a member of the Bank's governing bodies, the Government shall be informed of such meetings in accordance with the arrangements to be agreed with the Government by the EIB, and in the event that the Regional Office requires additional security or other assistance from the Government for large meetings convened in the Republic of South Africa, this will be discussed with, and agreed to by the appropriate authorities.

Article 11
Communications

1. The Bank shall enjoy in the Republic of South Africa the same level of treatment than that accorded to most favoured international organization accredited to the Republic of South Africa, in the matter of priorities, rates and charges for electronic mails, facsimile, telephone and other means of communications. In this Article, "communications" includes publications, documents, plans, blue prints, sketches, still and moving pictures, films, sound recordings, electronic transmissions, and other modes of communication.
2. No censorship or any other type of interception or interference shall be applied to the official communications to and from the Regional Office by whatever means or in whatever form transmitted.
3. The Bank shall have the right in the Republic of South Africa to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags which shall have immunities and privileges no less favourable than those accorded to diplomatic couriers and bags.
4. The Bank may install and operate in the Republic of South Africa point-to-point telecommunications facilities, including with the consent of the Government, radio sending and receiving station or stations and other state of the art communications and transmission facilities as may be necessary to facilitate communications with the Regional Office both from within and outside the Republic of South Africa. In this case, the Government shall assign adequate frequencies for the operation of the station or stations, and communicate those frequencies to the International Frequencies Registration Board. Prior to implementing this provision, the Bank and the Independent Communications Authority of South Africa (ICASA) shall enter into an agreement on mutually acceptable terms.

Article 12
Entry and Residence

1. The Government shall take all measures required to facilitate the entry into, residence in and departure from the Republic of South Africa, and freedom of movement in the South Africa, of the following persons entering the South Africa on official business:
 - (i) Members of the Bank's Board of Governors, their alternates and other members of their official delegations;
 - (ii) Officials and Employees of the Bank;
 - (iii) Officials and Employees of the Regional Office and Members of their Family and Members of their household staff; and
 - (iv) Other persons officially invited by the EIB in connection with official activities of the EIB in the Republic of South Africa. The EIB shall communicate the names of such persons to the relevant authorities of the South Africa.



The persons referred to above shall have the same freedom of movement within the territory of the South Africa and the same treatment in respect of travelling facilities, as is accorded to officials of comparable rank of diplomatic missions.

2. The Government shall exempt the persons referred to above in sub-Article 1 from immigration restrictions and alien registration. The EIB shall cooperate with the Government to avoid any prejudice to the national security of the Republic of South Africa.
3. The Government shall take appropriate steps to issue to its concerned officials, general instructions to grant visas to any persons referred to above in sub-Article 1, without delay and without payment of any charges.
4. The laissez-passer of the European Union as issued by the EIB to its Officials and Employees in accordance with the Protocol on the Privileges and Immunities of the European Union, annexed to the Treaty on the European Union and the Treaty on the functioning of the European Union, are considered as valid travel documents for the purposes of this Agreement.
5. At the request of the Bank, consultations may be held between the Government and the Bank on methods of facilitating entry into the South Africa by persons coming from abroad and visiting the Regional Office who do not enjoy the rights conferred by this Article.

Article 13

Privileges and Immunities of Officials and Employees of the Regional Office

1. In addition to the privileges and immunities provided for in Article 8 of the Framework Agreement and in the Letter of 3 November 2004, the Government shall accord to:
 - a. The Head of Regional Office, the Deputy Head of Regional Office and Officials and Employees of the Regional Office who are not nationals or permanent residents of the Republic of South Africa and the Members of their Family, the same privileges and immunities, exemptions and facilities as accorded to officials of comparable ranks forming part of diplomatic missions.
 - b. Officials and Employees of the Regional Office who are nationals or permanent residents of the Republic of South Africa, the following privileges and immunities:
 - (i) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (ii) immunity from personal arrest or detention for acts performed in their official capacity;
 - (iii) inviolability of their official papers and documents.
2. The Bank shall communicate to the Government the names of those Officials and Employees and the Members of their Family to whom the provisions of the present Article are applicable.
3. The Officials and Employees of the Regional Office and the Members of their Family shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Republic of South Africa and to certify that the holder enjoys the privileges and immunities specified in this Agreement. The Officials and Employees of the Regional Office and the Members of their Family, upon the termination of employment or reassignment from South Africa, shall return promptly to the Government the special identity card for cancellation.
4. The privileges, immunities, exemptions and facilities accorded in this Article are granted in the interests of the Bank and not for the personal benefit of the individuals themselves. The Bank shall have the right and the duty to waive the immunity of any Official or Employee of the Regional Office in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.



5. The Bank shall use its best efforts to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. Should the Government consider that an abuse has occurred, consultations shall be held between the Government and the Bank to determine whether any such abuse has occurred and, if so, to take any necessary action to ensure that no repetition occurs.

Article 14
Privileges and Immunities
of persons other than Officials and Employees of the Regional Office

1. In addition to the privileges and immunities provided for in Article 8 of the Framework Agreement, persons, other than Officials and Employees of the Regional Office, coming within the scope of Article 12 above, who are not nationals or permanent residents of the Republic of South Africa shall be accorded the following privileges and immunities as are necessary for the independent exercise of their functions during the period of their mission, including time spent on journeys in connection with their mission:
 - a) immunity from personal arrest or detention for acts in their official capacity;
 - b) immunity from seizure of their official baggage;
 - c) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind;
 - d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - e) the same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on and living with them as are accorded in time of international crises or national emergencies to diplomatic envoys; and
 - f) for the purpose of their communication with the Bank, the right to use codes and to receive papers or correspondence by courier or in sealed bags.
2. Persons who are nationals or permanent residents of the Republic of South Africa shall be afforded the immunities referred to in sub-Article 1(a), (b), (c) and (f).
3. The privileges, immunities, exemptions and facilities accorded in this Article are granted in the interests of the Bank and not for the personal benefit of the individuals themselves. The Bank shall have the right and the duty to waive the immunity of any person in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

Article 15
Settlement of Disputes

1. Any dispute between the Bank and the Government arising out this Agreement or any supplemental Agreement shall, unless amicably settled between the Bank and the Government, be referred for arbitration to a tribunal of three arbitrators. The Government and the Bank shall each designate one arbitrator, and the third arbitrator shall be appointed in agreement by both parties or, if no agreement is reached, by the President of the International Court of Justice.
2. The arbitrators shall fix the procedure of the arbitration and expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. 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.



Article 16
Amendment, Entry into Force and Termination

1. This Agreement shall enter into force on the date of signatures thereof by the Parties.
2. At the request of either the Government or the Bank, consultations shall take place regarding the implementation or modification of this Agreement. The Government and the Bank may enter into such supplementary agreements as may be necessary for the implementation or modification of this Agreement, in accordance with their respective constitutional procedures.
3. The provisions of the Framework Agreement and of this Agreement shall, where they relate to the same subject-matter, be treated, wherever possible, as complementary so that the provisions of both shall apply, neither shall narrow the effect of the other; but in any case of absolute conflict or divergence between the provisions of the two Agreements, the provisions which are most favourable to the EIB shall apply.
4. Either Party to this Agreement may terminate the Agreement by giving one year's notice in writing to the other Party of its intention to terminate it. The Parties shall be bound by the terms of, and their obligations under, this Agreement until the expiration of the notice period.
5. Relevant provisions of this Agreement shall continue to be applied after its termination during a reasonable period for the settlement of the affairs of the Bank and the disposal of its property in the Republic of South Africa.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto, have signed this Agreement in duplicate in the English language.

Done at Pretoria on this ____ day of _____ 2014

Done at Luxembourg on this ____ day of _____ 2014

For the Government of the
Republic of South Africa

For the European Investment Bank

Maite Nkoane-Mashabane
Minister of International Relations
and Cooperation

Alfonso Querejeta
Secretary General

