

A G R E E M E N T
B E T W E E N
T H E G O V E R N M E N T O F T H E K I N G D O M O F
N O R W A Y
A N D
T H E G O V E R N M E N T O F T H E R E P U B L I C O F S O U T H
A F R I C A
R E G A R D I N G
D E V E L O P M E N T C O O P E R A T I O N

PREAMBLE

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

CONSCIOUS that Norway and South Africa have signed a Memorandum of Understanding regarding Development Co-operation on 1 December 1994 which has been followed by a Declaration of Intent signed on 17 March 1999 and a Declaration of Intent signed on 26 March 2004;

AWARE that Norway and South Africa entered into an Agreement dated 13 June 1997 regarding the Reconstruction and Development Programme;

REAFFIRMING the friendly relations between the two states and their peoples;

BEARING in mind that respect for democratic principles, general principles for international law as well as human rights are leading principles in the development co-operation relationship between the two countries;

HEREBY AGREE as follows:

Article 1 Scope and Objectives

- (1) The objective of this Agreement is to contribute to the development of South Africa by providing financial assistance and overall conditions for the cooperation on the themes as described in the Declaration of Intent dated 26 March 2004.
- (2) The components of the programmes and projects supported under this Agreement shall be outlined in Business Plans in accordance with the specifications in Annex 1 to this Agreement.

Article 2 Cooperation and Representation

- (1) The Parties shall communicate and cooperate fully with the aim to ensure that the objectives of this Agreement are successfully achieved.

The Parties further agree to cooperate on preventing corruption within and through the Programme, and undertake to take rapid legal action to stop, investigate and prosecute in accordance with applicable law any person suspected of misuse of resources or corruption.

- (2) In matters pertaining to the implementation of the Business Plans the Norwegian Ministry of Foreign Affairs hereinafter referred to as (MFA) and the National Treasury of South Africa (hereinafter referred to as "the Treasury") shall be competent to represent Norway and South Africa respectively. MFA and the Treasury shall be the signatories to the Business Plans. The implementing department shall also sign the Business Plan as proof of the commitment.
- (3) The Norwegian Embassy in Pretoria hereinafter referred to as (the Embassy) is, as a part of MFA, competent to act on behalf of MFA. All communication to Norway in regard to this Agreement shall be directed to the Embassy.
- (4) The Treasury may designate implementation responsibilities of programmes or projects under this Agreement to agencies, line function departments, institutions or organisations hereafter collectively referred to the implementing authorities.
- (5) Designation of responsibilities for each programme or project and the overall financial frame shall be specified in the Business Plans.

Article 3 Contribution and Obligations of Norway

- (1) Norway shall, subject to Parliamentary appropriations, make available to South Africa financial grants, to be used exclusively to finance the programmes or projects as outlined in the Business Plans.
- (2) The grants shall be included in the yearly country frames for Norwegian Support to South Africa. The tentative financial frame of the components can be discussed at the annual consultations if one of the Parties asks for it.
- (3) Any accrued interest on the grants may be used for the benefit of the programmes or projects if so agreed by the Parties in writing.
- (4) Any unspent disbursed funds and accrued interest shall be returned to Norway upon completion of the Business Plans.

Article 4 Contributions and Obligations of South Africa

South Africa shall make all reasonable efforts to facilitate the successful implementation of this Agreement, and shall -

- (a) have the overall responsibility for the planning, administration, implementation and monitoring of the Business Plans;
- (b) ensure that funds, which shall include any accrued interest, are properly accounted for, and that the grants are reflected in the plans, annual reports, budgets and accounting of the implementing department;
- (c) ensure that the grants are used prudently and only to cover expenditures necessary for the implementation of the Business Plans;
- (d) promptly inform Norway of any circumstances that interfere or threaten to interfere with the successful implementation of this Agreement or the Business Plans;
- (e) undertake the obligations set out in Annex 2 with regard to the personnel providing advisory services;
- (f) defray any customs duties, sales taxes and other taxes, fees and levies on all equipment, materials and supplies financed by the grants and imported into the Republic of South Africa for the benefit of the Business Plans;
- (g) grant all permits, import licences and foreign exchange permissions that may be required;
- (h) permit representatives of Norway to visit any part of the Republic South Africa for purposes related to this Agreement and examine any relevant records, goods and documents.

Article 5 Disbursements

- (1) South Africa shall submit the first requests for disbursements from the grants after the Business Plans have been signed by the Parties. The requests shall be based on the liquidity needs of the Business Plans and, except the first request, on annual work plans and budgets approved by the Parties.
- (2) When determining the amount to be requested, South Africa shall take into account unspent disbursed amounts and income from all sources as well as any accrued interest which the Parties have agreed to use for the benefit of the Business Plans in terms of Article 3.
- (3) Along with the requests, except the first request, South Africa shall state the cash balance of the programmes and projects and submit financial statements of the accounts for the previous period.

- (4) Funds shall be transferred upon Norway's approval of the requests to the Reconstruction Development Programme (RDP) account or through another instrument or mechanism as described in the Business Plans and be made available to the implementing authorities immediately.
- (5) The Treasury shall have the responsibility to disburse the funding under this Agreement paid into the RDP account to the implementing authorities.
- (6) South Africa shall immediately, in writing, acknowledge receipt of the funds. The date of receipt shall be stated as well as the exchange rate applied.

Article 6 Annual Consultations

- (1) Representatives of the Parties shall have annual consultations each year in order to:
 - (a) review the overall direction of the cooperation;
 - (b) review the progress of the programmes and projects;
 - (c) discuss possible revisions of existing plans and budgets;
 - (d) discuss proposals for extension of ongoing or new programmes or projects;
 - (e) discuss issues of special concern for the implementation of the programmes and projects, e.g. risk management; and
 - (f) make recommendations and decisions for the future implementation of the programmes and projects.
- (2) The Parties may invite others to participate as observers or as advisors to their delegations.
- (3) Main issues discussed and points of view expressed as well as any decisions shall be recorded in Agreed Minutes. The Agreed Minutes shall be drafted by South Africa, and shall be sent to Norway for comments.

Article 7 Procurement

- (1) South Africa undertakes to effect all procurements of goods and services necessary for the implementation of the programmes and projects.
- (2) The procurements shall be performed in accordance with generally accepted procurement principles, good procurement practices and the procurement regulations of South Africa. Norwegian suppliers shall be given the same opportunities as other suppliers to compete for tenders.
- (3) South Africa shall observe the highest ethical standards during the procurement and execution of contracts, and shall ensure in its domestic law

adequate and effective means to punish and prevent illegal or corrupt practices.

- (4) No offer, gift, payments or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted. Invitations to make offers, as well as the procurement contracts shall, respectively, include a clause stating that the offer will be rejected and/or the contract cancelled, in case any illegal or corrupt practices have taken place in connection with the award or the execution of the contract.
- (5) Norway may, in exceptional cases and only if considered necessary for the progress of the programmes or projects, undertake procurements, upon request from South Africa. For purposes such as procurements South Africa shall forward to Norway a specified list of goods and equipment required. Norway shall enter into contracts with the relevant suppliers and effect payment directly to these.
- (6) South Africa shall upon request furnish Norway with all relevant information on its procurement practices and actions taken, and provide access to all related records and documents. Norway may require access to information even during the stage in the procurement procedure when it is restricted to the officers performing the procurement. Restrictions on such information shall be respected until the information can be made public without any risk of detriment to the result of the procurement.

Article 8 Audit

- (1) The annual financial statements of the Business Plans shall be audited by the South African Auditor General or any other audit firm as agreed to by the Parties. The audit shall be carried out in accordance with principles for government sector auditing.
- (2) The cost of the audit shall be covered by the Grant.
- (3) The audit shall be carried out in accordance with international auditing standards. The auditor shall state in the report which auditing standards have been applied.
- (4) The audit report shall state the auditor's opinion/findings as to:
 - (a) whether the financial statements present fairly, in all material respects, the Business Plan's income and expenditures as well as cash/bank/financial position;
 - (b) whether the audit has uncovered material weaknesses in financial systems of financial control or accounting;

- (c) whether the audit has uncovered any illegal or corrupt practices;
 - (d) whether funds have been used exclusively to cover expenditures as agreed in the Business Plans;
 - (e) whether receipts and use of funds are properly accounted for;
 - (f) whether the counter funds from South Africa have been made available according to the Business Plans;
 - (g) whether the grants are reflected in the budgets and accounting of South Africa; and
 - (h) whether appropriate internal controls counteracting illegal and corrupt practices have been established and complied with.
- (5) South Africa shall submit to Norway the audit report and any other report from the auditor significant to the implementation of the programmes and projects by 30 September each year. South Africa shall comment upon the auditor's findings.
- (6) Norway shall respond within six weeks upon receipt of the reports.

Article 9 Reports, Communication, Reviews, Evaluation

- (1) Measures for reporting, communication, reviews and evaluation of the programmes or projects shall be agreed upon separately in each Business Plan.
- (2) Norway reserves the right to carry out independent reviews or evaluations of the programmes and projects as and when Norway deems it necessary. The cost for such reviews shall be covered by funds over and above the Grant.

Article 10 Reservations

- (1) Norway reserves the right to withhold disbursements at any time e.g. in such cases where:
 - (a) programmes or projects develop unfavourably in relation to the objectives of this agreement;
 - (b) substantial deviations from agreed plans or budgets occur;
 - (c) resources to be allocated by South Africa are not provided as agreed;
 - (d) the documentation specified in the Business Plans has not been submitted as agreed; and
 - (e) the financial management of the programmes or projects has not been satisfactory

- (2) Norway reserves the right to reclaim all or parts of the grants if the funds are found not to have been used in accordance with this Agreement or the Business Plan or are found not to be satisfactorily accounted for.
- (3) Norway has the right to cancel this Agreement or Business Plan under this Agreement, and has the right to demand the cancellation of any contract financed under this Agreement, with immediate effect if it determines that corrupt or fraudulent practices were engaged in by representatives of South Africa or by a beneficiary of funds during procurement or execution of the contract without South Africa having taken timely and appropriate action to Norway's satisfaction to remedy the situation. The Parties shall inform each other of any indication of corrupt or fraudulent practices as mentioned in this sub-Article, that comes to their attention.
- (4) Before Norway withholds disbursements, reclaims funds or cancels the Agreement, the Parties shall consult with a view to reaching a solution in the matter.

Article 11 Distribution of the Agreement

The Parties shall distribute copies of this Agreement to the respective ministries, implementing authorities and other institutions involved in the cooperation or otherwise in need of information on its content.

Article 12 Entry into Force, Amendment, Duration and Termination

- (1) This Agreement shall enter into force on the date of its signature, and shall remain in force until terminated in terms of sub-Article 2.
- (2) Either party may terminate this Agreement by giving six months written notice in advance through the diplomatic channel of its intention to terminate this Agreement.
- (3) Termination of this Agreement shall not affect the completion of the obligations arising from the Agreement and the Business Plans. Whether the obligations are fulfilled, shall be determined in consultations by the Parties.
- (4) This Agreement may be amended at any time by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

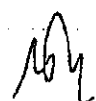
IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in duplicate in the English language, both texts being equally authentic.

Done at Pretoria on this 3 July day of of 2006.


**FOR THE GOVERNMENT OF
THE KINGDOM OF NORWAY**


**FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

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Annexure 1: Format for Business Plan

Annexure 2: Conditions for personnel providing advisory services

ANNEXURE 1

BUSINESS PLAN INDEX

Name of Project and Location

1. **PURPOSE OF THE PROJECT**
 - 1.1 *Project description*
 - 1.1.1 Name
 - 1.1.2 Project location
 - 1.2 *Project beneficiaries*
 - 1.3 *Goal and objectives of the project*
2. **SCOPE OF THE PROJECT**
 - 2.1 *Project outputs*
3. **DEVELOPMENT PATH OF THE PROJECT**
 - 3.1 *Project description*
 - 3.2 *Time schedule*
4. **MONITORING OF THE PROJECT**
 - 4.1 *Project management*
 - 4.1.1 Implementation agency
 - 4.1.2 National project management and contact person
 - 4.1.3 Decision-making process and hierarchy
 - 4.1.4 Project manager
 - 4.1.5 Accountability chain
 - 4.2 *Resources required for project implementation*
 - 4.2.1 The funding plan
 - 4.2.2 Provision for recurrent expenditure
 - 4.2.3 Provisional project budget and anticipated monthly expenditure
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4.6 *Project communications and external information*

ANNEXURE 2

CONDITIONS FOR THE PERSONNEL PROVIDING ADVISORY SERVICES

1. DEFINITIONS

In this Annexure, unless the context otherwise indicates:

"Advisory Services" means any service rendered by any public authority, public or private corporation as well as any organisation whether public or private, accepted by both Parties and contracted by Norway or South Africa to provide supporting services for the components or projects;

"Dependants" means the spouse of a personnel member or a co-habitant as specified in Norwegian legislation, any child under the ages of 21 years, any unmarried child who is busy with full-time studies at an educational institution, and any unmarried child who, due to physical or mental disability is incapable of self-support, and forms part of the household of any such member or joins any such household during visits to South Africa;

"Personnel" means persons not having the nationality and not being resident of South Africa:

- (a) employed by Norway;
- (b) employed by companies or institutions with whom Norway or South Africa has concluded an agreement for the execution of programmes or projects; or
- (c) employed by South Africa as topping up experts;

with regard to whom Norway has proposed and South Africa has accepted employment in respect of programme or projects.

2. ADMINISTRATIVE PROCEDURES

The scope of work and administrative procedures for Advisory Services shall be outlined in the Business Plans, referred to in Article 1(2), Section 4 of the present Agreement.

3. PRIVILEGES OF PERSONNEL

- (1) South Africa shall:
 - (a) exempt personnel issued with official or service passports by Norway from all taxes in respect of all remunerations paid to them by Norway. Personnel not in possession of official or service passports from Norway shall be exempted subject to the applicable South African domestic law;

- (b) exempt personnel and their dependants from paying import and customs duties and other fiscal charges including value-added tax on new or used household and personal effects, imported into the Republic of South Africa within six months of their arrival, which period may be extended in special circumstances, provided such goods on re-exportation shall also be exempted from the payment of duties;
- (c) exempt personnel from paying import and customs duties and other fiscal charges including value-added tax on professional equipment to be used for development co-operation activities and imported into the Republic of South Africa during the whole period of their assignment;
- (d) make provision for duty-free importation or purchase from bond of one motor-vehicle by each personnel member, in possession of an official or service passport from Norway, within six months of first arrival in the Republic of South Africa, which period may be extended or renewed in special circumstances subjected to re-exportation of such vehicle on completion of duty. In case a motor-vehicle is damaged beyond economical repair, provision shall be made, on a case by case basis, for the importation or purchase of another vehicle under conditions similar to those governing the procurement of the original vehicle;
- (e) make provision that personnel, not in possession of an official or service passport from Norway, may import vehicles with full rebate of applicable duties, in terms of the domestic laws in force in the Republic of South Africa, subject to re-exportation of such vehicles on completion of duty;
- (f) provide assistance to personnel and their dependants in obtaining security clearance and other entry and exit controls, issue without undue delay, on application, multiple entry visas for personnel and members of their families, as well as resident permits, work permits and other necessary permits and/or authorisations for the duration of the assignment, provided that the said visas, permits or authorisations shall only be issued by South Africa upon notification by Norway of the identity of the personnel and members of their families;
- (g) afford applicable personnel and their dependants the same repatriation or evacuation facilities in times of national or international crises as provided for staff or diplomatic missions under the Vienna Convention on diplomatic relations;

- (h) provide personnel with identity documents to assure them of the full assistance of the appropriate authorities of South Africa in the performance of their duties; and
- (i) subject to the applicable foreign exchange regulations, impose no currency or foreign exchange restriction on funds introduced into South Africa from external sources by personnel and their dependants for personal use; funds transferred into non-resident Rand accounts by personnel and their dependants shall remain at their exclusive disposal, and balances of such accounts shall be freely transferable, provided that such accounts have been fed exclusively from external sources; otherwise the account shall be subject to the usual exchange control provisions.

4. **IMMUNITIES**

- (1) South Africa shall grant immunity to personnel from legal action in respect of any act or omission or any words spoken or written in their official capacity.
- (2) For the purposes of this Article, if South Africa so requests, Norway shall provide South Africa with the administrative or legal assistance needed for satisfactory solution of any problem that may arise.

5. **PERFORMANCE OF PERSONNEL**

- (1) Personnel shall carry out their assignments in accordance with the scope of work to be agreed upon in the Business Plans. As far as the daily operations of a programme or project is concerned, they shall act in close consultation with the authorities responsible for the execution of the programme or project, and they shall abide by the operational instructions given by those authorities.
- (2) South Africa shall afford personnel any assistance they may reasonably require in order to enable them to perform their duties.
- (3) Personnel shall abide by the domestic laws in force in the Republic of South Africa.

6. **ARREST, DETENTION**

- (1) Notwithstanding the rights and duties of Norway and South Africa under international consular conventions, South Africa shall promptly notify Norway if personnel or one of their dependants is arrested, imprisoned, taken into pretrial detention or otherwise held in custody. All messages to Norway from personnel and their dependants in case of arrest, imprisonment, pretrial detention or custody, shall be forwarded to the Norwegian Embassy, without delay, by South Africa.

- (2) Representatives of Norway shall be entitled to visit, speak to and correspond with personnel and their dependants, who have been arrested, imprisoned, taken into pretrial detention or otherwise held in custody and shall be entitled to make arrangements for their legal representation.

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