

No. 45050*

**South Africa
and
Botswana**

Memorandum of understanding between the Government of the Republic of Botswana and the Government of the Republic of South Africa on the development of the Mmamabula Coal Fired Power Station (MCFPS). Gaborone, 18 August 2006

Entry into force: *18 August 2006 by signature, in accordance with article 18*

Authentic texts: *English*

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

**Afrique du Sud
et
Botswana**

Mémorandum d'accord entre le Gouvernement de la République du Botswana et le Gouvernement de la République sud-africaine relatif au développement de la Centrale à charbon de Mmamabula (MCFPS). Gaborone, 18 août 2006

Entrée en vigueur : *18 août 2006 par signature, conformément à l'article 18*

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]

PREAMBLE

WHEREAS the Government of the Republic of Botswana (hereinafter referred to as “Botswana”) and the Government of the Republic of South Africa (hereinafter referred to as “South Africa”) (hereinafter referred to in the singular as “a Party” and in the plural as “the Parties”) expressed their willingness to co-operate in relation to the possible development and construction of a thermal power station in the Republic of Botswana, to supply electricity to the Republic of Botswana, the Republic of South Africa and the Southern African Power Pool (hereinafter referred to as the SAPP);

AND WHEREAS at a meeting held in Johannesburg on the 21st October 2004 amongst the Minerals and Energy Ministers of Botswana and South Africa, the Finance Minister of Botswana, representatives of Eskom and BPC, the possible cooperation on the development of the Mmamabula Coal Fired Power Station was discussed;

AND WHEREAS the Government of the Republic of Botswana desires to work with all stakeholders, among which is the Government of the Republic of South Africa, on this development;

AND WHEREAS the Parties desire to promote bilateral cooperation between their countries, as part of the promotion of the Pan African development objectives under the aegis of the various instruments of cooperation on the African Continent, such as the New Partnership for Africa’s Development (hereinafter referred to as “NEPAD”) and the Southern African Development Community (hereinafter referred to as “SADC”);

AND WHEREAS BPC and Eskom intend to conclude an inter – utility Memorandum of Understanding for the implementation of this MOU

NOW THEREFORE the Parties agree as follows:



ARTICLE 1
DEFINITIONS

In this Memorandum of Understanding (hereinafter referred to as the "MOU" unless the context otherwise indicates -

"BPC" means the Botswana National Power Utility named Botswana Power Corporation;

"Concession" means the authority granted by Botswana to develop, build, own, and operate the MCFPS and to export power;

"Eskom" means the South African National Power Utility named Eskom Holdings Limited;

"MCFPS" means the Mmamabula Coal Fired Power Station supplied by the Mmamabula coal field or any viable coal source;

"Project" means the studies, design, insurance, financing, construction, ownership, operation and maintenance of the MCFPS and Transmission Integration.

"The Joint Commission" means the Commission to be established under Article 4 of this MOU.

"Utility" means either BPC or Eskom.

ARTICLE 2
PURPOSE OF MOU

The purpose of the MOU is to provide a general framework to -

- (a) create an enabling environment for the carrying out of the pre-feasibility study, feasibility study and business case for possible investment in the MCFPS;

Two handwritten signatures in black ink. The signature on the left is a stylized 'R' or 'B'. The signature on the right is a more complex, cursive signature.

- (b) provide guidelines for project investment, construction and operations within the MCFPS project;
- (c) provide an enabling agreement, or reference agreement, from which all subsequent agreements will be guided;
- (d) set out the key rights and responsibilities of each Party; and
- (e) set out principles agreed to by each Party.

ARTICLE 3 COMPETENT AUTHORITIES

The competent authorities responsible for the implementation of this MOU shall be:

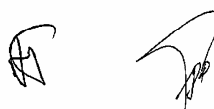
- (a) in the case of Botswana, its Permanent Secretary, Ministry of Minerals Energy and Water Resources; and
- (b) in the case of South Africa, its Director General, Department of Minerals, and Energy.

ARTICLE 4 ESTABLISHMENT OF THE JOINT COMMISSION

- (1) In order for both the MOU and the Project to be implemented and for the performance of the functions and the achievement of objects referred to in Articles 6 and 8, the Parties shall establish a Joint Commission which shall comprise:
 - (a) The Ministerial Authority; and
 - (b) The Technical Committee.

ARTICLE 5 THE MINISTERIAL AUTHORITY

- (1) The Ministerial Authority shall consist of the two respective Ministers of Energy of each Party.



- (2) The Ministerial Authority shall meet annually or more frequently depending on the urgency of issues tabled for discussion. The Ministerial authority may meet in extraordinary session at the request of a Party.
- (3) The first annual meeting of the Ministerial Authority shall be held in Botswana.
- (4) All subsequent meetings of the Ministerial Authority will be held alternatively in the Republic of South Africa and the Republic of Botswana.
All non-annual meetings of the Ministerial Authority will be held at venues to be decided upon and on a rotational basis.
- (5) A Minister of the Party in whose state an annual meeting is held will assume the chairpersonship of the Ministerial Authority at such meeting on a rotational basis and shall function in such capacity until the annual ordinary session of the following year.
- (6) Decisions of the Ministerial Authority shall be by consensus.
- (7) The quorum for meetings of the Ministerial Authority shall be the two members of the Ministerial Authority.

ARTICLE 6

FUNCTIONS AND POWERS OF THE MINISTERIAL AUTHORITY

- (1) The functions of the Ministerial Authority shall be to:
 - (a) Provide the broad framework for the implementation of the MOU and of the Project;
 - (b) Monitor progress on the implementation of the MOU and of the Project;
 - (c) Ensure the performance of functions and the achievement of objects referred to in Article 8; and
 - (d) Consider any matter bearing on the implementation of the MOU and of the Project brought to its attention by a Party or the Technical Committee.

