





## B. Foreign Investment in a Democratic South Africa

- B.1. The objectives of ANC socio-economic policy are to secure economic growth in a society that is politically and socio-economically stable and democratic. It is our view that this is the most favourable environment for both foreign and domestic investors.
- B.2. As a component of this environment a consistent, transparent and accessible policy framework for foreign investment will be essential. To achieve this requires a thorough review and revision of existing legislation. The ANC and its Alliance partners are presently working in this area in conjunction with UN agencies to ensure that we embody the best of international practice.
- B.3. It is proposed that future policy will be located around certain central features that would move us away from complex incentives packages, and policies which seek to exploit cheap labour. These central features are as follows:
- B.4. An open approach to the entry of foreign investment in its broad sense (direct foreign investment, portfolio investment, and non-equity forms of partnership). This would be accompanied by safeguards for the economy that would be built into the overall policy framework (B.6., B.7.), and safeguards for foreign investors.
  - B.4.1. In the event of nationalisation there would be fair compensation in accordance with accepted principles of international law.
  - B.4.2. Foreign investors will be assured that, subject to regulations that are administered by the South African Reserve Bank, they will have access to foreign exchange for the purposes of remitting after-tax profits, repaying the interest and capital on approved foreign loans, purchasing inputs, and repatriating the proceeds on the sale of assets.
- B.5. Secondly, that the principle of national treatment for foreign investors would apply. Foreign investors would enjoy the same treatment as domestic investors, and foreign investors would be obliged in all respects to abide by the applicable law of South Africa.
- B.6. The principle of national treatment for foreign investors would be qualified in ways that are generally specified here, and which would be clearly spelled out in a new policy framework. These are:
  - B.6.1. Foreign investors may be blocked from investing in certain strategic areas such as land, natural resources, and certain other sectors, or they may be required to enter into joint venture arrangements.
  - B.6.2. Companies owned or controlled by non-residents or in which non-residents have a significant shareholding, could have limits placed on their local borrowing facilities. The purpose of such restrictions is to



ensure the proper capitalisation of foreign investments, as well as to retain funds for local borrowers.

- B.6.3. Exceptions from national treatment may also be provided in respect of special advantages and investment incentives granted to previously disadvantaged groups. These will not be extended to foreign investors.
- B.6.4. Where foreign investment can play a specific role in the achievement of policy objectives, broadly set out below in B.7., specific contractual arrangements may be negotiated with foreign investors.
- B.7. Within the broad policy framework of the ANC, the following issues would be of specific relevance to foreign investment:
- B.7.1. the extent to which the enterprise in which the proposed investment is to be made will utilize South African resources, so as to contribute to the economy, by, inter alia,
- a) increasing employment opportunities in South Africa;
  - b) providing for the training of South Africans beyond minimum training obligations required by law;
  - c) earning or saving foreign exchange;
  - d) generating development in the less developed areas of South Africa;
- B.7.2. the extent to which the investment will contribute to the transfer of technology and promote the spread of high level technical skills amongst South African citizens;
- B.7.3. the extent to which the enterprise in which the proposed investment is to be made will contribute to the advancement of persons within South Africa who have been socially, economically, or educationally disadvantaged by past discriminatory laws and practices or will facilitate the implementation of policies and programmes aimed at redressing social, economic, or educational imbalances in South African society;
- B.7.4. the extent to which the enterprise in which the proposed investment is to be made will make provision for equal opportunities for women;
- B.7.5. the impact which the activities of the enterprise in which the proposed investment is to be made is likely to have on the environment, and the measures proposed to deal with any adverse environmental consequences.
- B.8. In the event of freer trade and investment relations within Southern Africa or beyond, foreign investors will have the option of investing in several different countries to get access to the same regional market. Participating countries should avoid unnecessary and costly competition against each other through financial or similar incentives. Such competition for firms which would in all likelihood establish themselves in



the region anyway would simply reduce the net benefit of foreign investment to the region as a whole. To this end, cooperation should be sought with neighbouring countries in the process of formulating policies towards foreign investors.

## C. Our Approach in the Interim Phase

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- C.1. The apartheid legislative process that governs investment at present is a major obstacle to growth and development. In this context the process of foreign investment needs to be assessed with care.
- C.2. At present the basic ILO Conventions do not apply across South Africa. Discriminatory practices are widespread, and the lack of transparency in government is hiding corruption and inefficiency, and promoting political violence and destabilisation. Measures to protect the environment are weak, weakly implemented or non-existent. Investing in such a context will, therefore, not automatically contribute to growth, development or the eradication of apartheid.
- C.3. The ANC therefore proposes that any investment in the interim period should be governed by the following principles:
  - C.3.1. labour practices should accord with all basic ILO Conventions;
  - C.3.2. investment should enhance employment creation;
  - C.3.3. employment practices must actively counter discrimination in the workplace;
  - C.3.4. investment must incorporate environmentally sound and clean practices and technology;
  - C.3.5. investment must enhance the productive capacities of South Africans, and should, in particular, incorporate affirmative action programmes;
  - C.3.6. investment must contribute to the security of employment of South Africans.
- C.4. It is the ANC's intention to have these principles incorporated in the future policies of a democratic government, and should apply to all investors, national or foreign.
- C.5. However, in the interim phase we will campaign for these principles, and will support the further development of codes of conduct, along with COSATU and the SACP.



Negotiations File

# ANC begins grassroots test for deal

**T**HE past two weeks have been overshadowed by a debate on whether a deal has been struck between the ANC and the Government on a government elected after the first all-in general elections.

Both have vigorously denied an agreement, but said greater convergence has emerged between the two main negotiating partners on the transition period.

The Government and ANC are discussing a preliminary agreement on an interim government of national unity (GNU) to govern from the first election until the adoption of a new constitution.

However, a final decision on a GNU will be taken only at the new multiparty negotiating forum.

But, political observers say, the acid test for the preliminary agreement will be the ability of the National Party and the ANC to win their members' support for the proposed package.

The ANC has begun the process of informing its members of the agreement, which initially evoked strong opposition from the Natal Midlands region and lesser grumblings from senior ANC officials.

The ANC national executive committee (NEC) last week endorsed a new package for the transition committing the organisation to a comprehensive programme of reconstruction running parallel to the transition process.

One of the crucial tasks facing the ANC is dispelling any hint of a "sell-out" deal having been struck with the Government involving permanent power-sharing undermining full majority rule.

The ANC, in a newsletter, clearly informs its members that it has rejected the Government's proposal for power-sharing for a fixed or permanent period.



Political Reporter ESTHER WAUGH reports on an African National Congress document drawn up to explain to its rank-and-file members the thinking behind its proposed new package for the transition to democracy.

It insists that a GNU "must not stand in contradiction to the principle of majority rule".

According to the ANC, the Government's power-sharing proposals will give minority parties a veto over the party that gets the majority of votes in the first democratic general elections.

The ANC says its proposal for a GNU "does not seek to share power but to harness it for the purpose of rebuilding and reconstructing our society".

Its scenario proposes that the composition of the GNU reflects "voter preferences and nothing else".

The ANC points out several mechanisms in the package it will present at the negotiating forum which precludes any entrenchment of veto powers for minority parties in the new government.

Both the GNU — which will rule from the first election until the completion of the constitution — and the government of national unity and reconstruction — which rules from the completion of the constitution until the second elections — should have a single president

elected by the constituent assembly.

Each party will be represented in the Cabinet in proportion to the number of seats it has won in the constituent assembly.

The president should have executive powers but, on certain specified issues, decisions will be taken by a two-thirds majority in the Cabinet.

The ANC has rejected proposals for a rotating president, Cabinet decisions being taken by consensus and entrenched power-sharing.

On the controversial issue of regional government, the NEC said decisions about the powers, functions and boundaries of regions should be taken by the constituent assembly.

Should a multiparty negotiating forum appoint a "commission of regions", its main task would be to determine regions for the elections, but its recommendations would be made to the constituent assembly.

The ANC said its transition package was an attempt to develop national unity and prevent a counter-revolution against democracy. □