

AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE UNITED REPUBLIC OF TANZANIA AND THE KINGDOM OF THE NETHERLANDS

The Kingdom of the Netherlands

And

The United Republic of Tanzania,

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) The term "investments" means every kind of asset and more particularly, though not exclusively:

(i) Movable and immovable property as well as any other rights in rem in respect of every kind of asset; in rem in respect of every kind of asset;

(ii) Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) Claims to money, to other assets or to any performance having an economic value;

(iv) Rights in the field of intellectual property, technical processes, goodwill and know-how;

(v) Rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

b) The term "investors" shall comprise with regard to either Contracting Party:

(i) Natural persons having the nationality of that Contracting Party;

(ii) Legal persons constituted under the law of that Contracting Party;

(iii) Legal persons not constituted under the law of that Contracting Party but controlled by natural persons as defined in (i) or by legal persons as defined in (ii).

c) The term "territory" means: the territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign rights.

Article 2. Promotion and Protection of Investments

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments non-discriminatory physical security and protection.
2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.
3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.
4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.
5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.
6. By way of exception to the principle of the treatment of investments established in paragraph 2 of this Article, in case of the United Republic of Tanzania, limited incentives may be granted only to its nationals and industries in order to protect infant industries, provided they do not significantly affect the investments and activities of nationals and companies of the other Contracting Party in connection with an investment. Subject to the strengthening of the capacity of local industries, the United Republic of Tanzania shall eliminate progressively such special incentives.

Article 4. Taxes and Fiscal Matters

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own investors or to those of any third State who are in the same circumstances, whichever is more favourable to the investors concerned. For this purpose, however, any special fiscal advantages accorded by that Party, shall not be taken into account:

- a) Under an agreement for the avoidance of double taxation; or
- b) By virtue of its participation in a customs union, economic union or similar institution; or
- c) On the basis of reciprocity with a third State.

Article 5. Transfers

1. Each Contracting Party shall guarantee that all payments relating to investments in its territory of investors of the other Contracting Party may be freely transferred into and out of its territory without restriction or delay in a freely convertible currency. Such transfers shall include, in particular, though not exclusively:
 - a) The initial capital, including reinvested returns, used to maintain or develop an investment;
 - b) The returns;
 - c) The proceeds from a total or partial sale or liquidation of an investment;
 - d) Funds in repayment of loans;

e) Payments of compensation;

f) Payments arising out of the settlement of a dispute;

g) Earnings of personnel, that is allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

2. Transfers shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred.

3. A Contracting Party may require that, prior to the transfer of payments relating to an investment, tax obligations in relation to such an investment are fulfilled by the investors, provided that such obligations shall be non-discriminatory and shall not be used to defeat the purpose of paragraphs 1 and 2 of this Article.

Article 6. Expropriation and Compensation

Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

a) The measures are taken in the public interest and under due process of law;

b) The measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;

c) The measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 7. Compensation for Losses

Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 8. Subrogation

If the investments of an investor of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 9. Settlement of Disputes between a Contracting Party and an Investor

1. Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965.

2. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting Party.

Article 10. Applicability of this Agreement

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments which have been

made before that date. It shall however, not be applicable to disputes which have arisen prior to its entry into force.

Article 11. Consultations

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within six months by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.
2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.
3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.
4. If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.
5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.
6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 13. Territorial Application

This Agreement shall apply to the United Republic of Tanzania and to the Kingdom of the Netherlands. As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph 1 provides otherwise.

Article 14. Entry Into Force, Duration and Termination

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen years.
2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
3. In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.
4. Subject to the period mentioned in paragraph 2 of this Article, the present Agreement may be terminated by the United Republic of Tanzania separately with respect to any of the parts of the Kingdom of the Netherlands, and may also be terminated by any of the parts of the Kingdom of the Netherlands separately with respect to the United Republic of

Tanzania.

Article 15. Succession

Upon the entry into force of this Agreement, the Agreement on Economic and Technical Cooperation, between the United Republic of Tanzania and the Kingdom of the Netherlands, signed on 14 April 1970 in Dar es Salaam, will be replaced by the present Agreement.

DONE in two originals, at Dodoma, on 31 July 2001 in the English language.

For the Kingdom of the Netherlands

For the United Republic of Tanzania

The Ministry of Foreign Affairs and International Co-operation of the United Republic of Tanzania presents its compliments to the Royal Netherlands Embassy and has the honour to refer to the Agreement between the Government of the United Republic of Tanzania and the Government of the Royal Netherlands Embassy on the promotion and protection of investments.

The Ministry would like to inform the esteemed Embassy that the Government of the United Republic of Tanzania has fulfilled the constitutional requirements for entry into force of this Agreement.

As stipulated under Article 14 of the agreement, a party that has fulfilled the constitutional requirements for entry into force of the Agreement should inform the other party by exchange of diplomatic note. It is on this pretext that the Government of the United Republic of Tanzania is sending this notification.

The Ministry of Foreign Affairs and International Co-operation Of the United Republic of Tanzania avails itself of this opportunity to renew to the Royal Netherlands Embassy the assurance of its highest consideration

Dar es Salaam, 27th September, 2002

Royal Netherlands Embassy

DAR ES SALAAM