

Agreement between the Government of the French Republic and the Government of the Republic of Zimbabwe on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Republic of Zimbabwe hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Zimbabwe and Zimbabwean investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of every kind and, in particular but not exclusively:

- a) Movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, guarantees and similar rights;
- b) Shares, stocks and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;
- c) Obligations, claims and rights to all benefits having economic value;
- d) Intellectual, commercial and industrial property rights, such as copyrights, patents, licenses, trademarks, industrial models and designs, technical processes, know-how, registered names and goodwill;
- e) Concessions granted by law or by virtue of a contract, in particular concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zone of the Contracting Parties.

Changing the form of investment of assets shall not affect their qualification as investments, provided that the change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

2. The term "nationals" means:

- for the Republic of Zimbabwe; natural persons whose status as nationals of Zimbabwe derives from the laws in force in Zimbabwe;

- for the French Republic: individuals possessing French nationality.

3. The term "companies" means any legal person incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period. Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. The term "territory" means the territory of each Contracting Party, including its maritime zone, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have jurisdiction and exercise sovereign rights, in accordance with international law, for the purpose of exploring, exploiting or conserving natural resources.

Article 2. Promotion and Admission of Investments

Each Contracting Party shall admit and encourage, within the framework of its legislation and the provisions of this Agreement, investments made by nationals and companies of the other Contracting Party.

Article 3. Protection of Investments

Each Contracting Party undertakes to ensure, in its territory, fair and equitable treatment, in accordance with the principles of international law, of investments made by nationals and companies of the other Contracting Party and to ensure that the exercise of the right so recognized is not hindered either in law or in fact. In particular, although not exclusively, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as impediments in law or in fact to fair and equitable treatment.

The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of one Contracting Party in connection with an investment in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Treatment

Each Contracting Party shall apply in its territory to the nationals or companies of the other Contracting Party, in respect of their investments and activities connected with such investments, treatment no less favourable than that accorded to its own nationals or companies, or the treatment accorded to the nationals or companies of the most-favoured-nation, whichever is the more advantageous. In this connection, nationals authorized to work in the territory of one of the Contracting Parties shall enjoy appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization. The provisions of this Article do not apply to tax matters.

Article 5. Expropriation and Compensation

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Contracting Party of investments belonging to them in their territory, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking. Any measures of dispossession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, shall be assessed in relation to a normal economic situation prior to any threat of dispossession. This indemnity, its amount and the terms of payment shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment at the appropriate market rate of interest.

3. The nationals or companies of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt in the territory of the other Contracting Party shall receive from the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6. Free Transfer

Each Contracting Party, in whose territory investments have been made by nationals or companies of the other Contracting Party, shall grant to such nationals or companies the free transfer of:

(a) interest, dividends, profits and other current income ;

(b) royalties derived from the intangible rights referred to in paragraph 1(d) and (e) of Article 1

(c) Payments made for the repayment of loans regularly contracted;

(d) Proceeds from the total or partial sale or liquidation of the investment, including capital gains on the investment

(e) the compensation for loss or dispossession provided for in paragraphs 2 and 3 of Article 5 above. Nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7. Investment Guarantee

If the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory of the other Party.

Investments by nationals and companies of one of the Contracting Parties in the territory of the other Contracting Party may not obtain the guarantee referred to in the above paragraph unless they have first obtained the approval of the latter Party.

Article 8. Application of the Agreement

It is understood that the investments referred to in Article 1 must be or have been invested in accordance with the legislation of the Contracting Party in whose territory the investment is made, whether before or after the entry into force of this Agreement.

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

Any investment dispute between one Contracting Party and a national or company of the other Contracting Party shall be settled amicably between the two Parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall, at the request of either party, be submitted to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 10. Subrogation

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory of the other Party, makes payments to its nationals or companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue actions brought before it until the proceedings have been completed.

Article 11. Special Undertaking

Investments which have been the subject of a special undertaking by one Contracting Party in respect of nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking in so far as it contains provisions more favourable than those provided for in this Agreement.

Article 12. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint an arbitrator, and the two arbitrators so appointed shall, by mutual agreement, appoint a national of a third State who shall be nominated as Chairman of the tribunal by both Contracting Parties. All arbitrators shall be appointed within two months from the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the President of the International Chamber of Commerce to make the necessary appointments. If the President is a national of either Contracting Party or is for any other reason prevented from exercising this function, the most senior Vice-President who is not a national of one of the Contracting Parties shall make the necessary appointments. The arbitration tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties. The tribunal shall determine its own rules. It shall interpret the decision at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally between the Contracting Parties.

Article 13. Entry Into Force and Duration

This Agreement shall enter into force one month after the date of receipt of the final instrument of ratification.

The agreement is concluded for an initial period of ten years. It shall remain in force after this period, unless one of the Parties denounces it through diplomatic channels with a one-year notice.

Investments made prior to the expiration of this Agreement shall continue to enjoy the protection of the provisions of Articles 1 through 12 for an additional period of twenty years from the date of expiration.

Done at Harare, this 4th day of May 2001, in two originals, each in the English and French languages, both texts being equally authentic.

For the Government of the French Republic :

Mr. Didier Ferrand, Ambassador of France to Zimbabwe

For the Government of the Republic of Zimbabwe :

Mr. Simba Herbert Stanley Makoni,

Minister of Finance and Economic Development

ANNEX

ANNEX TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

Concerning Articles 2 and 3:

With respect to the Republic of Zimbabwe, it is understood that the term "legislation" includes the laws and administrative rules and regulations in force in its territory.

Done at Harare, this 4th day of May 2001, in two originals, each in the English and French languages, both texts being equally authentic.

For the Government of the French Republic :

Mr. Didier Ferrand,

Ambassador of France to Zimbabwe

For the Government of the Republic of Zimbabwe :

Mr. Simba Herbert Stanley Makoni,

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