

# Agreement of the Republic of Zimbabwe and the State of Kuwait for the Promotion and Reciprocal Protection of Investments

The Republic of Zimbabwe and the State of Kuwait (hereinafter referred to as the "Contracting Parties");

Desiring to create favorable conditions for the development of economic cooperation between them and, in particular, for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and mutual protection of such investments will be an incentive to revitalize commercial initiative and to increase prosperity in both Contracting Parties;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this agreement:

1. The term "investment" means all kinds of assets or rights in the territory of a Contracting Party that are owned or controlled, directly or indirectly, by an investor of the other Contracting Party, and include assets or rights consisting of or taking the forms of:

(a) corporation, shares, shares, and other forms of equity interest, bonds, debentures and other forms of interest on corporate debt and other debts, loans and debentures issued by any investor of a Contracting Party;

(b) claims for money and claims for any other assets or performance under a contract of economic value;

(c) intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs, patterns, technical processes, know-how, trade secrets, trade names and goodwill;

(d) any right conferred by law or contract or under any licenses and permits granted in accordance with law, including rights to explore, explore, extract or exploit natural resources and rights to engage in other economic or commercial activities or to provide services;

(e) tangible and intangible property, movable and immovable, and any related property rights such as rents, mortgages, debt liens and encumbrances;

(f) The proceeds and amounts from the liquidation that are reserved for the purpose of reinvestment.

Any change in the form in which the assets or rights are invested or reinvested will not affect its nature as an investment.

2. The term "investor" means in relation to a Contracting Party:

(a) a natural person who holds the nationality or citizenship of that Contracting Party in accordance with its applicable law;

(b) the government of that Contracting Party;

(c) any legal person established or authorized under the laws and regulations of that Contracting Party, such as institutes, development funds, agencies, charities, other legal entities, bodies, and companies.

3. The term "company" means any legal entity, whether its objective is financial profit or not, whether it is owned or controlled by the private or government sector, which is incorporated in accordance with the laws of a Contracting Party or is wholly owned or controlled by the investors of a Contracting Party, which includes a company, a trust company, a partnership company, a sole proprietorship, a branch, a joint venture, a union or other similar organizations.

4. The term "returns" means amounts generated by an investment, regardless of the form in which they are paid, and includes, in particular, but not limited to, profits, interest, capital gains, dividends, royalties, management, technical

assistance or other payments or fees and payments in kind regardless of their types.

5. The term "liquidation" means any act carried out for the purpose of total or partial termination of the investment.

6. The term "territory" means the territory of a Contracting Party, including any area outside the territorial sea which has been or may be defined in accordance with international law as an area in which a Contracting Party may exercise the rights of sovereignty or jurisdiction under its laws.

7. The term "freely convertible currency" means any currency specified by the International Monetary Fund from one period to another as a negotiable currency in accordance with the provisions of the International Monetary Fund Agreement and any subsequent amendments.

8. "Without delay" means such period of time normally required to complete the necessary formalities for the transmission of payments. The aforementioned period starts from the day on which the transfer request is submitted, provided that it does not, in any case, exceed one month.

9. The term "laws and regulations" includes legislation as well as in the issuance of administrative laws and regulations.

## **Article 2. Admission and Promotion of Investments**

1. Each Contracting Party shall, in accordance with its applicable laws and regulations, encourage and accept investments made in its territory by investors of the other Contracting Party.

2. Each Contracting Party shall, with respect to investments acceptable in their territory, grant such investments all royalties, approvals, licenses and authorizations to the extent permitted and in accordance with the principles and conditions specified in its laws and regulations.

3. The Contracting Parties may consult with each other by any means they deem appropriate to encourage and facilitate investment opportunities within their respective territories.

4. Each Contracting Party shall, in accordance with its laws and regulations relating to the entry, stay, and work of natural persons and in good faith without regard to nationality or citizenship, study the requests of senior management personnel of technicians and administrators appointed for investment purposes for temporary entry and residence in its territory. The immediate family members of such employees shall be accorded the same treatment with respect to entry and temporary residence in the host contracting party.

5. When goods or persons connected with an investment are transferred, each Contracting Party shall, to the extent permitted by its laws and regulations, permit such transfer to be carried out by enterprises of the other Contracting Party.

## **Article 3. Investment Protection**

1. Investments made by investors of either contracting party shall, in all cases, enjoy fair treatment and full protection and security in the territory of the other contracting party in a manner consistent with international law and the provisions of this agreement. Neither of the contracting parties shall, in any way, take arbitrary or discriminatory measures that lead to harming the use, management, disposal, operation, expansion, sale, or another disposal of investments.

2. Each Contracting Party shall immediately publish or otherwise announce all its laws, regulations, procedures, directives, guidelines, administrative procedures, and judicial decisions for general applications as well as international agreements relating to or affecting the operation of the provisions of this Agreement or investments in its territory to investors of the other Contracting Party.

3. Each Contracting Party agrees to provide effective means to assert claims and enforce rights in respect of investments. Each contracting party shall guarantee the investors of the other contracting party the right to resort to judicial courts, courts, administrative bodies, and all other bodies exercising judicial authority, as well as the right to employ persons of their choice and qualified in accordance with the applicable laws and regulations for the purpose of asserting claims and implementing rights in respect of their investments.

4. Neither Contracting Party shall impose, as a condition of the acquisition, expansion, use, management, disposal or operation of investments of investors of the other Contracting Party compulsory measures, which may require or restrict the purchase of materials, energy, fuel, means of production, transportation or operation of any kind or Restrict the marketing of products within or outside its territory, or any measures that have a discriminatory effect against investments made by investors of the other Contracting Party in favor of investments made by its investors or investors of a third country.

5. In addition, investments in the host contracting party are not subject to performance requirements that may be considered harmful to their growth or have a negative impact on their use, management, disposal, operation, expansion, sale, or any other disposal.

Investments made by investors of either Contracting Party shall not be subject to seizure, confiscation or any similar measures except in accordance with legal methods and in accordance with the principles of applicable international law and other provisions relating to this Agreement.

6. Each Contracting Party shall observe any obligation or undertaking to which it is a party in relation to investments in its territory to investors of the other Contracting Party.

## **Article 4. Treatment of Investments**

1. With respect to the use, management, disposal, operation, expansion, sale, or other disposition of investments made in its territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that which it accords in similar cases to investments of its own investors or investors of any third country, whichever is more favorable to such investments.

2. Therefore, the provisions of this Article shall not be construed as obligating a contracting party to provide investors with affiliates of the other contracting party an advantage for any treatment, preference or privilege resulting from:

(a) any customs union, economic union, free trade area, monetary union or any other form of regional economic arrangement or other similar international expenditure to which either Contracting Party is or may become a party;

(b) any international or regional agreement, bilateral agreement or any other similar arrangement, and any local legislation relating wholly or principally to tax.

## **Article 5. Compensation for Losses**

1. Except in the application of Article 6, when investments made by investors of one Contracting Party suffer losses due to war or any other armed conflict, national emergency, revolution, civil commotion, rebellion, riots, or other similar events in the territory of the other Contracting Party, A treatment shall be accorded by the other Contracting Party with respect to restoring conditions, refunding compensation, insurance or other settlement, a treatment no less favorable than that accorded by the other Contracting Party to its investors or to investors of any third country, whichever is more favorable to the investor.

2. Without prejudice to paragraph (1), the investors of the two contracting parties who suffer a loss as a result of any of the events referred to in that paragraph in the territory of the other contracting party and resulting from:

(a) the temporary seizure of their investment, or part of it, by their forces or authorities;

(b) the destruction of their investment, or part thereof, by their forces or authorities, without this being due to hostilities or without seeing the necessity of the situation,

shall be given compensation or restore the conditions to what they were, no less favorable than that which the other Contracting Party grants to its investors or investors of any third country, and in both cases, shall be immediate, sufficient, and effective.

## **Article 6. Expropriation**

1. (a) investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subject, directly or indirectly, to measures of an effect equivalent to nationalization, expropriation or dispossession (collectively as "Expropriation") by the other contracting party except for a general purpose related to the national interest of that contracting party and in return for immediate, adequate and effective compensation, provided that those measures were taken on a non-discriminatory basis and in accordance with generally applicable legal procedures.

(b) The amount of such compensation shall be the actual value of the expropriated investment, determined and computed in accordance with internationally recognized valuation principles on the basis of the fair market value of the expropriated investment at the time prior to the expropriation taking place or the imminent expropriation becoming public, whichever is earlier; (hereinafter referred to as "the date of the valuation" (when the occurrence is known).") This compensation is calculated in a freely convertible currency chosen by the investor on the basis of the market value of the exchange rate

prevailing for that currency on the valuation date and includes interest at the prevailing commercial market rate based on the market rate, however, Provided that it is not in any way less than the prevailing interest rate in London banks (Libor) or its equivalent from the date of expropriation until the date of payment.

(c) If the above-mentioned fair market value cannot be easily ascertained, compensation is determined based on equitable principles, taking into account all factors and circumstances related to it, such as capital invested, nature and period of investment, replacement value, depreciation, current returns, calculated cash flow value and book value, and commercial fame. The final compensation amount is paid immediately to the investor.

2. In light of the principles set forth in Paragraph (1) and without prejudice to the rights of the investor contained in Article 9 of this Agreement, the affected investor shall have the right to an immediate review of his case by a judicial authority or other independent competent authority of the Contracting Party that has expropriated the property, including Including an assessment of his investment and compensation payments for that investment.

3. For the purposes of this Agreement, the term "expropriation" also includes interventions or legal procedures carried out by a contracting party that have the same effect as expropriation and that result in depriving the investor in fact of his ownership or dominance over or his essential interests in his investment or that may result in a loss or damage to the economic value of the investment, such as the freezing or seizure of the investment, the imposition of an arbitrary or excessive tax on the investment, the compulsory sale of all and part of the investment, or other similar measures.

4. In the event that a Contracting Party expropriates the assets of a company created or incorporated under the law in force in any part of its territory, in which investors of the other Contracting Party own shares, it shall, to the extent necessary, to secure compensation in accordance with this Article, be available to those investors.

## **Article 7. Transfer of Payments Related to Investments**

1. Each Contracting Party guarantees to investors of the other Contracting Party the free transfer of payments related to an investment inside and outside its territory, including the transfer of:

- (a) the original capital and any additional capital for the maintenance, management, and development of the investment;
- (b) returns;
- (c) payments under contract, including repayment of principal and interest payments made pursuant to a loan agreement;
- (d) royalties and fees for the rights referred to in Article 1, paragraph (1) (d);
- (e) proceeds from the sale or liquidation of all or any part of an investment;
- (f) earned money and other remuneration to employees contracted from abroad who are related to the investment;
- (g) compensation payments in accordance with Articles 5 and 6;
- (h) the payments referred to in Article 8;
- (i) Payments arising from the settlement of disputes.

2. The transfer of payments under paragraph (1) is accomplished without delay or restrictions, except in the case of payments in kind and in a freely convertible currency. In the event of a delay in making the required transfers, the affected investor is entitled to receive interest for the delay period.

3. Transfers shall be made at the prevailing market exchange rate in the host contracting party on the date of conversion to the currency to be converted. In the absence of a foreign exchange market, the applicable rate is the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the exchange rate for converting currencies to the Special Drawing Rights or the US dollar, whichever is more favorable to the investor.

## **Article 8. Subrogation of the Investor**

1. If a Contracting Party or its relevant agency (the "Guarantor Party") makes payments under an indemnity or guarantee it has undertaken in respect of an investment in the territory of the other Contracting Party (the "Hosting State"), the Host State shall recognize:

- (a) by assigning to the guarantor by law or legal agreement all rights and claims arising from such investment;

(b) The right of the guarantor party to exercise such rights and implement such claims and to undertake all obligations related to the investment based on the principle of substitution for the creditor.

2. A Guarantor Party is entitled, in all circumstances, to the same treatment with respect to:

(a) the rights and claims acquired and obligations assumed under the assignment referred to in paragraph (1) above;

(b) any payments received pursuant to such rights and claims, as the original investor was entitled to receive under this Agreement in connection with the relevant investment.

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

1. Disputes that arise between a Contracting Party and an investor of the other Contracting Party in respect of an investment belonging to the latter in the territory of that other Contracting Party shall, as far as possible, be settled amicably.

2. If it is not possible to settle those disputes within six months from the date of either of the two parties to the dispute requesting an amicable settlement by delivering a written notification to the other party, the dispute shall be resolved by the choice of the investor, the party to the dispute, by the following means:

(a) in accordance with any applicable dispute settlement procedures agreed upon in advance;

(b) for an international arbitration in accordance with the following paragraphs of this Article.

3. In the event the investor chooses to submit the dispute to international arbitration, the investor must also submit his written consent to submit the dispute to one of the following bodies:

(a) (i) The International Center for Settlement of Investment Disputes (the "Center"), established pursuant to the Agreement on the Settlement of Investment Disputes between States and Nationals of Other Countries opened for signature in Washington on March 18, 1965 (the "Washington Convention") if both Contracting Parties are a party of the Washington Convention and the Washington Convention is applied to the dispute;

(ii) the Centre, under the rules for additional provisions and facilities for administrative work by the Secretary of the Center ("the Additional Facilities Rules"), if the contracting party to the investor or the contracting party is a party to the dispute, but not both of them are a party to the Washington Convention;

(b) an arbitral tribunal established under the Arbitration Rules (the Rules) of the United Nations Commission on International Trade Law (UNCITRAL), where the parties to the dispute may amend those Rules (the appointing body referred to in Article 7 of those Rules shall be the Secretary-General of the Centre);

(c) An arbitration court to be appointed based on the arbitration rules of any arbitral tribunal agreed upon between the parties to the dispute.

4. Although the investor may have submitted the dispute to arbitration under paragraph 3, he may seek an interim injunction before the judicial or administrative courts of the Contracting Party that are a party to the dispute, before the arbitration proceeding is instituted or during the proceeding, to retain his rights and interests and provided That his request does not include the payments of any damages.

5. Each Contracting Party gives its unconditional consent to submit the investment dispute for settlement by arbitration at the option of the investor under paragraphs 3 (a) and (b) or the mutual expenditure of the parties to the dispute under paragraph 3 (c).

(a) the consent in paragraph 5, together with the consent in paragraph 3, satisfies the requirement for the written consent of the parties to the dispute for the purposes of both Chapter II of the Washington Convention, the Rules of Additional Facilities, and Article II of the United Nations Convention on the Recognition of the Enforcement of Foreign Arbitral Awards, done at New York at 10 June 1958 ("New York Convention"), Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article, as may be mutually agreed between the parties to the dispute, shall be held in a State which is a party to the New York Convention. Claims submitted to arbitration pursuant to the provisions of this Agreement shall be deemed to have arisen outside the scope of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

(c) Neither of the Contracting Parties shall grant diplomatic protection or submit an international claim in connection with any dispute referred to arbitration, except in the event of the failure of the other Contracting Party to comply with or comply

with the judgment rendered in respect of that dispute. However, for the purposes of this subparagraph, diplomatic protection does not include the exchange of unofficial diplomatic notes solely for the purpose of facilitating the settlement of a dispute.

7. The arbitration court established under this article shall decide the issues related to the dispute in accordance with those rules of the law as agreed upon by the parties to the dispute. In the absence of such an agreement, the law of the contracting party to the dispute shall apply, including its rules on conflict of laws and those special rules recognized by international law, as the applicable rules are also taking into account the provisions relating to this agreement.

8. For the purpose of Article 25(2)(b) of the Washington Convention, the investor, other than a natural person who holds the nationality of the contracting party to the dispute at the date of the written consent referred to in paragraph (6) and who, before the dispute arose between him and that contracting party, is dominated by the investors of the party The other contracting party shall be treated as a "national of the other contracting party," and for the purpose of Article (6) of the Additional Facilities Rules shall be treated as a "national of the other country."

9. The Contracting Parties shall implement any such provision immediately, and shall take the necessary measures for the effective implementation of such provisions in their respective territories in accordance with their local laws.

10. The Contracting Party shall not pay its diplomatic immunity in any judicial, arbitral, or other proceedings, or in the implementation of any decision or judgment relating to an investment dispute between a Contracting Party and an investor of the other Contracting Party, and no counterclaim or right of set-off may be established on The fact that the concerned investor has received, or will receive, based on an insurance contract, compensation for damage or any other compensation for all or part of the damages claimed by any third party.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall, as far as possible, settle any dispute regarding the interpretation and application of this Agreement through consultations or other diplomatic channels.

2. If the dispute is not settled within six months from the date on which such consultations or other diplomatic channels were requested by either Contracting Party, and unless the Contracting Parties agree otherwise in writing, either Contracting Party may, by written notification to the other Contracting Party, submit the dispute to An arbitration court shall be convened for this purpose in accordance with the following provisions of this Article.

3. The arbitration court shall be constituted as follows: each of the contracting parties appoints one member, and these two members agree on a citizen of a third country to be the president of the arbitration court, to be appointed by the contracting parties. These two members shall be appointed within two months, and the president within four months from the date of notifying either of the contracting parties to the other contracting party of its intention to submit the dispute to an arbitration court.

4. If the periods specified in Paragraph (3) above are not observed, either Contracting Party may in the absence of any other arrangement, may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the contracting parties, or if there is an impediment preventing him from performing the aforementioned task, the Vice President of the International Court of Justice, who is a national of one of the contracting parties, shall be asked to make the necessary appointments. If the Vice-President of the International Court of Justice is the Contracting Parties, or if he finds an impediment preventing him from performing the aforementioned task, the member of the court next in seniority and who is not a national of one of the contracting parties shall be asked to make the necessary appointments.

5. The arbitration court shall take its decision by a majority of votes. This decision shall be taken in accordance with the provisions of this Agreement and the generally accepted and applicable rules of international law, and shall be final and binding on both contracting parties. Each of the contracting parties shall bear the fees of the member of the arbitration court appointed by that contracting party, as well as the fees of its representative in the arbitration proceedings. As for the president's fees, as well as any other costs, they shall be borne equally by both contracting parties. Nevertheless, the arbitration court may, at its discretion, decide that one of the contracting parties bears all or a large part of the costs. The arbitration court shall determine its own procedures with respect to all other matters.

## **Article 11. Relationships between the Contracting Parties**

The provisions of this Agreement shall apply regardless of the existence of diplomatic or consular relations between the Contracting Parties.

## **Article 12. Application of other Provisions**

If the law of either Contracting Party or obligations under international law existing now or later arising between the Contracting Parties in addition to this Agreement and its laws, whether public or private, shall accord investments made by investors of the other Contracting Party a treatment more favorable than those set forth in this Agreement, this provision shall prevail over this Agreement to the extent that it provides a more favourable treatment.

## **Article 13. Scope of Application**

1. This Agreement applies to all investments, whether existing on the date of entry into force of this agreement or made after that date by investors of either Contracting Party in the territory of the other Contracting Party.
2. Notwithstanding the provisions of paragraph (1) of this Article, in relation to the Republic of Zimbabwe, if Investments to which this Agreement applies and which were accepted before May 1, 1993, are subject to transfer restrictions of the capital stock, which is found at the time of acceptance of the investment. The Government of the Republic of Zimbabwe seeks to reduce and end these restrictions.

## **Article 14. Entry Into Force**

Each of the Contracting Parties shall notify the other party in writing that it fulfills the constitutional requirements necessary for the entry into force of this agreement, and this agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for a period of thirty (30) years, after which it shall continue in force for a similar period or periods, unless either Contracting Party notifies the other Contracting Party in writing one year before the expiry of the first period or any subsequent period of its intention to terminate this Agreement. agreement.
2. With regard to investments made prior to the effective date of the notice of termination of this agreement, the provisions of this agreement shall remain in effect for a period of twenty (20) years from the date of termination of this agreement.
3. This Agreement shall be valid notwithstanding any dispute that may arise between the Contracting Parties, without prejudice to its rights to take temporary measures after consultations between them, and it is authorized under the general rules of international law. The procedures shall be canceled by the last date of the actual end of the dispute.

In witness thereof, the respective plenipotentiaries of both Contracting Parties have signed this Agreement.

Done in Kuwait on this seventh day of March, of the month of Dhu al-Hijjah 1420 AH, corresponding to the 7th day of March 2000 in two original copies in the English and Arabic languages, and all texts are of equal authenticity. In case of difference, the English text shall prevail.

For the Republic of Zimbabwe

For the State of Kuwait