

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of the Republic of Zambia (hereinafter referred to as the Contracting Parties),

Wishing to create favorable conditions for the improvement of economic cooperation between the two countries, and in particular with regard to investments made by investors of a Contracting Party in the territory of the other Contracting Party,

Is

Recognizing that the promotion and mutual protection of such investments through International Agreements will help to stimulate entrepreneurial initiatives that will enhance the prosperity of the two Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

"Investment" means any asset invested, before or after the entry into force of this Agreement, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter.

Without limiting the general scope of the foregoing, the term "investment" includes in particular but not exclusively:

- a) Movable and immovable property, as well as all other rights "in rem", including, insofar as they can be used for investment purposes, the real rights of guarantee on third party property;
- b) Equity, bonds, participation fees and any other right, interest in companies, as well as government bonds and public securities in general;
- c) Rights on sums of money or other services having an economic value linked to an investment, as well as reinvested earnings and capital increases;
- d) Copyright, trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, commercial secrets, trade names and goodwill;
- e) Any law of economic nature conferred by law or by contract, as well as any license and concession issued in accordance with the regulations in force for the pursuit of economic activities, including prospecting, extraction and exploitation of natural resources;
- f) Any increase in the value of the original investment.

Any change in the form in which the asset has been invested not in, in its nature of investment.

2. Investment does not mean:

i) Requests for money deriving exclusively from:

- a) Commercial contracts for the sale of goods or services by a citizen or an enterprise in the territory of a Contracting Party to an enterprise in the territory of another Contracting Party, or
- b) Credit concessions relating to commercial transactions, such as financial credits.

3. "Investor" means any natural or legal person of a Contracting Party who invests in the territory of the other Contracting Party.
4. "Natural person" means, with reference to each Contracting Party, any natural person having the nationality of that State in accordance with its law.
5. "Legal person" means, with reference to each Contracting Party, any entity having its head office in the territory of one of the Contracting Parties and recognized by it as public institutions, corporations of persons or of capital, foundations or associations, irrespective of Whether their liability is limited or not.
6. "Income" means the sums received from an investment, including, in particular, profits or interests, capital gains, dividends, royalties or technical assistance or technical fees.
7. "Territory" means, in addition to areas within the land borders, also "maritime areas". The latter also include marine and submarine areas on which the Contracting Parties exercise, under international law, their sovereignty or on which they exercise, sovereign rights or jurisdiction.
8. "Investment Agreement" means an agreement between a Contracting Party (or its Agencies and Representatives) and an investor of the other Party on investment.
9. "Non-discriminatory treatment" means a treatment which is at least as favorable as the one accorded to the nationals of each Contracting Party, with the exemptions provided for by legislation in the territories of the Contracting Parties. Non-discriminatory treatment also means a treatment that is at least as favorable as that accorded to third States.
10. "Right of access" means the right to be admitted to investing in the territory of the other Contracting Party.

## **Article 2. Promotion and Investment Protection**

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in its territory.
2. Investors of one of the Contracting Parties shall have the right to enter into investment activities in the territory of the other Contracting Party under conditions not less favorable than those accorded under Article 3. Article 3.
3. The two Contracting Parties shall at all times guarantee fair and equitable access to the investments made by investors of the other Contracting Party. Each Contracting Party shall ensure that the management, conservation, use or enjoyment, transformation or transfer of investments made in its territory by investors of the other Contracting Party, as well as the companies and undertakings in which such investments have been made, are in no way obstructed by unjustified or discriminatory measures.
4. Each Party will create and maintain in its territory a legal framework to guarantee investors the continuity of legal treatment, including the respect, in good faith, of all commitments made to a single investor.

## **Article 3. National Treatment and the Most Favored Nation Clause**

Each Contracting Party shall, in its own territory, grant investment, and related income, made or controlled by the investors of the other Contracting Party a treatment no less favorable than that accorded to the investment and its income, its nationals or investors of States Third parties as defined in art.1.9.

## **Article 4. Compensation for Damages or Losses**

If the citizens and companies of one of the Contracting Parties suffer damage or loss in the investments made in the territory of the other Contracting Party for war or other forms of armed conflict, revolutions, state of emergency, riots, insurrection or rebellion, Obtain from the Contracting Party in which the investment which has suffered the damage, compensation, indemnification, compensation or other regulation on a non-discriminatory basis and in any case no less favorable than that which the Contracting Party grants to the company or Third country nationals. Their payments will be freely transferable.

## **Article 5. Nationalization or Espionage**

1. Investments covered by this Agreement may not be subject to any measure that may restrict, permanently or temporarily, the right of ownership, possession, control and enjoyment of the investment, except in the cases specifically provided for by current national or local law, by regulations and judgments issued by competent Courts or Tribunals.

2. Investment by investors of one of the Contracting Parties shall not be nationalized, expropriated or subject to any other measure having similar effects in the territory of the other Contracting Party, except for public purposes, against prompt, adequate and effective compensation and provided that Such measures shall be taken on a non-discriminatory basis and in accordance with all legal provisions and procedures.

3. The right amount of compensation will be equivalent to the actual market value of the investment immediately before the nationalization or expropriation decision is made public by the Government.

The exchange rate applicable to each indemnification shall be the official date of the day immediately preceding the date on which nationalization or expropriation is made public by the Government.

4. Without limiting the scope of the preceding paragraph, where an object of nationalization, expropriation or similar event is a foreign capital company, the valuation of the investor's share will be in the currency of the investment, to a degree not lower than the initial value of the investment, capital increase plus capital revaluation, unallocated profits and reserve funds, and a reduction in the value of capital and loss reductions

5. Compensation will be considered effective if paid in the same currency as the foreign investor has made the investment, to the extent that this currency is - or remains - convertible, or otherwise, in any other currency accepted by the investor.

6. Compensation will be considered timely if it occurs without undue delay and, in any event, within three months.

7. Compensation includes interest calculated on the basis of the EURIBOR rate of six months from the date of nationalization or expropriation until the date of actual payment.

8. A citizen or a company of one of the Contracting Parties claiming that all or part of his investment has been expropriated shall be entitled to the immediate examination by the judicial or administrative authorities of the other Party in order to determine whether the expropriation has and, if so, whether such expropriation and any related compensation would be in accordance with the principles of international law and in order to decide on all the other matters connected with it.

9. In the absence of an agreement between the investor and the competent authority, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 9 of this Agreement. Article 9 of this Agreement.

Compensation will be freely transferable.

10. The provisions of paragraph 2 of this Article shall also apply to the profits resulting from an investment and, in the event of liquidation, to the proceeds arising from it. Paragraph 2 of this Article shall also apply to profits from an investment and, of the winding-up, to the proceeds derived from it.

11. If, after the expropriation, the property in question has not been used, in whole or in part, for that purpose of public utility the owner, or his attorneys, have the right to repurchase the good at market price.

## **Article 6. Capital Repatriation, Profits and Income**

1. Each of the Contracting Parties shall guarantee to investors of the other Contracting Party the free transfer abroad, without undue delay, in any convertible currency, of the following:

- a) Capital and additional amounts, including reinvested earnings, used to maintain and increase investment;
- b) Net income, dividends, royalties, compensation for assistance and technical services, interest and other income;
- c) Income from total or partial sale or total or partial liquidation of an investment;
- d) Funds for the repayment of loans relating to an investment and the payment of interest thereon;
- e) Remuneration and allowances paid to nationals of the other Contracting Party for activities and services carried out in connection with an investment made in the territory of the other Contracting Party, to the extent and in accordance with the procedures laid down by the applicable national laws and regulations.

2. Without prejudice to the scope of Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same favorable treatment accorded to investments made by third-country investors, if more favorable.

## **Article 7. Subrogation**

In the event that a Contracting Party or its entity has provided a guarantee covering non-commercial risks for investments made by one of its investors in the territory of the other Contracting Party and has made payments to the aforementioned investor on the basis of that guarantee, the other Contracting Party shall recognize the transfer of the investor's rights to the first Contracting Party. The provisions of Articles 4, 5 and 6 of this Agreement shall apply with regard to the transfer of payments to the Contracting Party or to its entity on the basis of such transfer.

## **Article 8. Transfer Procedures**

1. The transfers referred to in Articles 4, 5, 6 and 7 shall be made without undue delay and in any case within six months of the fulfillment of the tax obligations and shall be made in convertible currency. Such transfers shall be made at the exchange rate prevailing on the date on which the investor submits a request for transfer, with the exception of the provisions of Article 5 (3) concerning the exchange rate applicable in the case of nationalization or expropriation.
2. The tax obligations referred to in the preceding paragraph shall be deemed to have been fulfilled when the investor has performed the procedures provided for by the law of the Contracting Party in whose territory the investment was made.

## **Article 9. Disputes between Investors and Contracting Parties**

1. All disputes between one of the two Contracting Parties and investors of the other Contracting Party concerning investments, including those relating to the amount of compensation, shall be settled as far as possible in a friendly manner.
2. If an investor or an investor of one of the parties has entered into an investment agreement, the procedure laid down in that investment agreement shall apply.
3. If such disputes can not be resolved amicably within six months of the date of the written request for settlement, the interested investor may, at his option, submit the dispute:
  - a) To the Court of the Contracting Party competent for the territory;
  - b) To an arbitration, in accordance with national law;
  - c) To an ad hoc Arbitral Tribunal, in accordance with the United Nations Commission on International Commercial Law (UNCITRAL) Arbitration Rules, and the Contracting Party hosting the investment agrees to accept the reference to such arbitration rules;
  - d) The International Center for the Settlement of Disputes in Investments, for the application of the arbitration procedures provided for in the Washington Convention of 18 March 1965 on settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it.
4. Both Contracting Parties shall refrain from negotiating any matter relating to an arbitration or judicial proceeding already initiated until such proceedings have been concluded and one of the Contracting Parties has failed to comply with the decision of the Arbitral Tribunal or the ordinary court within the period laid down in the judgment, or within the period which may be determined on the basis of the provisions of international or domestic law applicable to the present case.

## **Article 10. Composition of Contracts between the Contracting Parties**

1. Any dispute arising between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, in a friendly manner through diplomatic channels.
2. If a dispute can not be resolved within six months of the date on which one of the Contracting Parties has notified it in writing to the other Contracting Party, it shall, at the request of one of the Contracting Parties, submit to an Ad hoc Arbitral Tribunal As provided for in this Article.
3. The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. The two members shall in turn design a national of a third State as President. The Chairman shall be appointed within three months of the date on which the other two members have been nominated.
4. If, within the period specified in paragraph 3 of this Article, appointments have not been made, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to appoint. If the President of the Court is a citizen of one of the Contracting Parties or, for whatever reason, is unable to do so, the Vice

President of the Court shall be appointed. If the Vice President of the Court is a citizen of one of the Contracting Parties, or for whatever reason cannot make a nomination, the senior member of the International Court of Justice who is not a national of any of the Contracting Parties will be invited to do so.

5. The Arbitral Tribunal will decide by majority vote, and its decisions will be binding. Both Contracting Parties will support the costs of their Referee and their representatives at the hearings. The salaries for the President, and any other expenses, will be divided equally between the Contracting Parties. The Arbitral Tribunal will establish its own procedures.

## **Article 11. Relations between Governments**

The provisions of this Agreement shall apply irrespective of whether the Contracting Parties have diplomatic or consular relations.

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

1. Where obligations arising under international law or from the law of one of the Contracting Parties, currently in force or which may enter into force subsequently, subsequently set out by the Contracting Parties in addition to this Agreement, contain rules, general or specific, Investments and profits of investors of the other Contracting Party with a right to a more favorable treatment than that accorded by this Agreement, these rules will, to the extent that they are more favorable, prevail over this Agreement.

2. The provisions of Article 3 and paragraph 1 of this Article shall not apply to benefits and privileges that a Contracting Party may grant to third-country investors by virtue of their membership of a Customs Union or Economic Union, a Common Market, a Free Trade Area, a Regional or Sub-Regional Agreement, to an Agreement International multilateral economic agreement designed to prevent double taxation or to facilitate cross-border exchanges.

## **Article 13. Entry Into Force**

This Agreement shall enter into force on the date of receipt of the second of the two notifications with which each of the Contracting Parties shall officially notify the other of the completion of their respective ratification procedures.

## **Article 14. Duration and Expiration**

1. This Agreement shall remain in force for ten (10) years from the date of notification referred to in Article 13 and shall remain in force for a further period of ten (10), unless one of the two Contracting Parties denies in writing, not later than one year before its expiry date, its intention to terminate this Agreement.

2. In the case of investments made before the expiry date referred to in paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain in force for an additional period of five (5) years from the above dates.

3. The terms of this Agreement may be amended by mutual consent of the two Contracting Parties and such amendments shall be made through an exchange of notes through diplomatic channels. The date of entry into force will be governed by Article 13.

Done at Lusaka on 30 April 2003, in two originals, each in the Italian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA