

**Decrees, Orders, Circulars**

**GENERAL TEXTS**

**MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT**

**Decree No. 2014-416 of 22 April 2014 on the publication of the Agreement between the Government of the French Republic and the Government of the Republic of Zambia on the Reciprocal Encouragement and Protection of Investments signed at Lusaka on 14 August 2002)**

**NOR: MAEJ1407071D**

**The president of the Republic,**

**On the report of the Prime Minister and the Minister of Foreign Affairs and International Development,**

**Having regard to the Constitution, in particular Articles 52 to 55 thereof;**

**Having regard to Law No. 2004-1114 of 20 October 2004 authorizing the approval of the Agreement between the Government of the French Republic and the Government of the Republic of Zambia on the reciprocal promotion and protection of investments;**

**Having regard to Decree No. 53-192 of 14 March 1953, as amended, relating to the ratification and publication of the international commitments entered into by France,**

**Decree:**

**Art. 1. - The Agreement between the Government of the French Republic and the Government of the Republic of Zambia on the Reciprocal Encouragement and Protection of Investments, signed at Lusaka on 14 August 2002, will be published in the Official Journal of the French Republic.**

**Art. 2. The Prime Minister and the Minister for Foreign Affairs and International Development shall be responsible for the implementation of this Decree, which shall be published in the Official Gazette of the French Republic.**

**Dated this 22nd day of April, 2014.**

**By the President of the Republic:**

**The Prime Minister,**

**Manual Valls**

**Francois Hollande**

**Laurent Fabius Minister of Foreign Affairs and International Development**

## **AGREEMENT**

### **BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

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

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Zambia and Zambia in France.

Convinced that the encouragement and protection of such investments are conducive to stimulating the transfer of capital and technology between the two countries in the interests of their economic,

Have agreed on the following provisions:

#### **Article 1. Definitions and Fields**

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of any kind and, more particularly but not exclusively:

(A) movable and immovable property, and any other rights in rem, such as mortgages, liens, usufructs, sureties and similar rights;

(B) Shares, share premiums and other forms of participation, even minority or indirect, in companies established in the territory of one of the Contracting Parties;

(C) Bonds, debts and rights to any benefits having an economic value;

(D) Intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models and models, technical processes, know-how, registered names And customers;

(E) Concessions granted by law or under contract, including concessions for the prospecting, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Parties Contracting.

It is understood that such assets shall be or have been invested in accordance with the law of the Contracting Party in the territory or in the maritime area of which the investment is made before or after the entry into force of this Agreement.

No change in the form of investment of the assets shall affect their classification as an investment, provided that such modification is not contrary to the legislation of the Contracting Party in whose territory or sea area the investment is made.

2. The term "nationals" means natural persons possessing the nationality of one of the Contracting Parties.

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

4. "Income" means all amounts yielded by an investment, such as profits, royalties or interest, over a period of time.

Investment income and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as investment.

5. "Territory" means the territory in which each Party exercises sovereign rights and jurisdiction in accordance with international law.

The term "maritime area" is defined as the economic zone and the continental shelf which extend beyond the territorial waters of each of the Contracting Parties and on which they have, in accordance with international law, sovereign rights And a court for the purpose of prospecting, exploiting and preserving natural resources.

6. Nothing in this Agreement shall be construed as preventing either Contracting Party from making any provision for the regulation of investments by foreign investors and the terms and conditions of such investors, To encourage cultural and linguistic diversity.

7. For the purposes of this Agreement, it is understood that the Contracting Parties are responsible for the actions or omissions of their public authorities, including their federated States, regions, local authorities or any other entity over which the Contracting Party exercises Guardianship, representation or responsibility for its international relations or sovereignty.

## **Article 2. Investment Encouragement and Admission**

Each Contracting Party shall encourage and permit, in accordance with its legislation and the provisions of this Agreement, investments made by nationals and companies of the other Party in its territory and maritime zone.

## **Article 3. Fair and Equitable Treatment**

Each Contracting Party undertakes to ensure, in its territory and in its maritime area, fair and equitable treatment, in accordance with the principles of international law,

Nationals and companies of the other Party and to ensure that the exercise of the right thus recognized is not impeded in law or in fact. In particular, although not exclusively, any restriction on the free movement, purchase and sale of goods and services, as well as any other measures having a legal or A similar effect.

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and residence, work and movement by nationals of one Contracting Party in respect of an investment in Territory or maritime zone of the other Contracting Party.

## **Article 4. National Treatment**

And most-favored-nation treatment

Each Contracting Party shall apply in its territory and maritime zone to nationals or companies of the other Party with respect to their investments and activities connected with such investments treatment no less favorable than that accorded to its nationals or companies, Or the treatment accorded to the nationals or companies of the most favored nation, if the latter is more advantageous. Nationals authorized to work in the territory and in the maritime zone of one of the Contracting Parties shall be entitled to the material facilities appropriate for the exercise of their professional activities.

Such treatment shall not, however, extend to privileges granted by a Contracting Party to 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 shall not apply to taxation matters.

## **Article 5. Disposal and Compensation**

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

2. The Contracting Parties shall not take expropriation or nationalization measures or any other measures the effect of which is to deprive, directly or indirectly, nationals and companies of the other Party of investments belonging to them within their territory and In their maritime area, except for reasons of public utility and provided that such measures are neither discriminatory nor contrary to a particular commitment.

Any dispossession measures that may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, equal to the actual value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

This allowance, the amount thereof and the terms of payment shall be fixed not later than the date of dispossession. This allowance is effectively realizable, paid without delay and freely transferable. It produces interest calculated at the appropriate market interest rate up to the date of payment.

3. Nationals or companies of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime zone of The other Contracting Party shall enjoy treatment no less favorable than that accorded to its own nationals or companies or to those of the most favored nation.

## **Article 6. Free Transfer**

Each Contracting Party shall, in the territory or maritime zone from which investments have been made by nationals or companies of the other Contracting Party, guarantee to such nationals or companies the free transfer:

(A) Interest, dividends, profits and other current income;

(B) royalties arising from the intangible rights referred to in article 1 (1) (d) and (e);

(C) payments made for the repayment of loans duly contracted;

(D) Proceeds from the sale or liquidation, in whole or in part, of the investment, including the capital gains of the invested capital;

(E) Indemnities for loss or loss provided for in Article 5, paragraphs 2 and 3 above.

Nationals of either Contracting Party who have been authorized to work in the territory or in the maritime zone of the other Contracting Party in respect of an approved investment are also authorized to transfer to their country of origin an appropriate quota Of their remuneration.

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

In the event of exceptional balance-of-payments difficulties and external financial difficulties or such a threat, each Contracting Party may temporarily restrict transfers provided that such restriction: (i) is promptly notified to the other Party; (ii) is compatible with the Articles of Agreement of the International Monetary Fund; (lii) in any case does not exceed six months; Or (iv) implemented in a fair, non-discriminatory and bona fide manner.

## **Article 7. Guarantee and Subrogation**

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, the latter may be granted, on a case-by-case basis, to investments made by Nationals or companies of that Party in the territory or maritime zone of the other Party.
2. Investments of nationals and companies of one Contracting Party in the territory or maritime zone of the other Contracting Party shall be entitled to the security referred to in the preceding paragraph only if they have, The latter Party.
- (3) If one of the Contracting Parties, by virtue of a guarantee given for an investment in the territory or in the maritime zone of the other Party, makes payments to one of its nationals or to one of its Of its companies, it is, therefore, subrogated in the rights and actions of that national or company.
4. Such payments shall not affect the rights of the Guarantor to have recourse to ICSID or to pursue the actions brought before it until the outcome of the proceedings.

## **Article 8. Specific Commitment**

Investments which have been the subject of a special commitment by one of the Contracting Parties 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 this undertaking Insofar as it contains provisions more favorable than those provided for in this Agreement.

The provisions of Article 7 of this Agreement shall apply even in the case of a specific undertaking providing for the renunciation of international arbitration or designating an arbitral tribunal different from that referred to in Article 7 of this Agreement.

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

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

If such a dispute can not be settled within six months from the time of its raising by either party to the dispute, it shall be submitted at the request of either party The other Party, unconditionally and notwithstanding any other contractual provision or waiver of international arbitration, arbitration of the International Center for Settlement of Investment Disputes (ICSID), established by the Convention for the Settlement of Investment Disputes Of disputes relating to investments between States and nationals of other States, signed at Washington on 18 March 1965.

In the event that the dispute is such as to give rise to liability for actions or omissions of public authorities or bodies dependent on one of the two Contracting Parties within the meaning of Article 1 (7) of this Agreement, Such public authority or body shall be required to give unconditional consent to the use of arbitration by the International Center for Settlement of Investment Disputes (ICSID) within the meaning of Article 25 of the Convention for the settlement of disputes Of disputes relating to investments between States and nationals of other States, signed at Washington on 18 March 1965.

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

1. Disputes concerning the interpretation or application of this Agreement, other than investment disputes referred to in Article 8 of this Agreement, shall be settled, if possible, through the diplomatic channel.
2. If the dispute is not settled within six months of the date on which it is raised by either of the Contracting Parties, it shall be submitted, at the request of one of the Contracting Parties, Or the other Contracting Party, to an arbitral tribunal.
3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member, and the two members shall designate by common agreement a national of a third State who shall be appointed Chairman of the tribunal by the two Contracting Parties. All members shall be appointed within a period of two months from the date on which one of the Contracting Parties has informed 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 Secretary-General of the United Nations Make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if for any other reason he is prevented from serving in that capacity, the most senior and non-national Of the Contracting Parties shall make the necessary appointments.

5. The arbitral tribunal shall take its decisions by a majority of votes. These decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the tribunal otherwise provides, taking into account particular circumstances, the costs of the arbitral proceedings, including the vacations of the arbitrators, shall be apportioned equally among the Contracting Parties.

## **Article 11. Entry Into Force and Duration**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of twenty years. It shall remain in force after that term, unless one of the Parties denounces it through the diplomatic channel with one year's notice.

Upon the expiry of the period of validity of this Agreement, investments made while it is in force shall continue to be protected by its provisions for an additional period of twenty years.

Done at Lusaka, on 14 August 2002, in two originals, each in the French and English languages, both texts being equally authentic.

For the Government of the French Republic:

Jean-Paul Monchau Ambassador of France to Zambia

For the Government of the Republic of Zambia:

Bates Namuyamba Minister for Trade and Industry