

Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Zimbabwe for the Promotion and Reciprocal Protection of Investments

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

DESIRING to intensify economic co-operation between both States,

INTENDING to create favourable conditions for investments by investors of either State in the territory of the other State,

RECOGNIZING that the promotion and reciprocal protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the respective laws and regulations of the latter Contracting Party, including, in particular, but not exclusively:

- a) Movable and immovable property and any other property rights such as mortgages, liens, pledges, and usufructs;
- b) Shares, stocks, and debentures of companies or interests in the property of such companies;
- c) Claims to money or to any performance under contract having financial value;
- d) Intellectual property rights, technical processes, know how, goodwill; and
- e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved or admitted under Article 9.

2. The term "returns" shall mean amounts yielded by an investment, particularly, though not exclusively, shall include profits, interest, capital gains, dividends, royalties or fees;

3. The term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, that;

(i) Is, in fact, widely used to make payments for international transactions, and

(ii) Is widely traded in the principal exchange markets.

4. The term "investor" shall mean

a) Any natural person having the nationality of either Contracting Party, in accordance with its laws and regulations who invests in the territory of the other Contracting Party; or

b) Any legal person, company, corporation, partnership, or other business association, incorporated or constituted in the territory of either Contracting Party in accordance with its laws and regulations who invests in the territory of the other

Contracting Party.

5. The term "laws" includes legislation as well as administrative regulations.

6. The term "territory" shall mean, with respect to each Contracting Party, the territory of that Contracting Party including the territorial sea, as well as the continental shelf and the exclusive economic zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments into its territory in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

2. Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. Most Favoured Nation Treatment

1. Neither Contracting Party shall in its territory subject investments by investors of the other Contracting Party to treatment which is less favourable than that accorded to investments made by its own investors or investors of any third State.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State.

3. The treatment granted under this Article shall not apply to the benefit of any treatment, preference or privilege which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs, monetary, or economic union or a common market or free trade area.

4. The treatment granted under this Article shall not apply to the benefit of any advantage which either Contracting Party accords to its own investors or to investors of a third State by virtue of a double taxation agreement or any other agreement or law regarding matters of taxation.

Article 4. Expropriation

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Investments by investors of either Contracting Party shall not be expropriated, nationalised or subjected to any other measure the effect of which would be tantamount to expropriation or nationalisation in the territory of the other Contracting Party except for;

a) For a public purpose; and,

b) Against prompt, adequate, and effective compensation.

3. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalisation or other comparable measure becomes publicly known.

4. The compensation shall be paid without delay, shall carry the usual commercial interest until the date of payment and shall be effectively realisable and freely transferable.

The determination and payment of such compensation shall be made in an appropriate manner at or prior to the time of expropriation, nationalisation, or other comparable measure.

5. The legality of any such expropriation, nationalisation or other comparable measure and the amount of such compensation shall be subject to review by due process of law.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to

war or other armed conflict, revolution, a state of national emergency or revolt shall be accorded treatment no less favourable by the other Contracting Party than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is the more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

Article 6. Repatriation of Investments

1. Each Contracting Party shall allow without delay the free transfer in freely usable currencies of payment in connection with investments and returns therefrom, in particular, but not exclusively, of:

- a) The principal and additional amounts to maintain or increase the investment;
- b) The returns;
- c) Repayment of loans;
- d) Royalties and fees for the rights referred to in Article 1, 1 (d);
- e) The proceeds from the liquidation or, sale of the whole or any part of the investment.

2. Transfers under Articles 4, 5 or 6 shall be made without delay in a freely usable currency at the rate of exchange applicable on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risk given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

Article 8. More Favourable Treatment

1. If the laws of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a provision, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provision shall to the extent that it is more favourable prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 9. Scope of Application

This Agreement shall apply to all investments made after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party which have been or are;

- a) Made in accordance with the laws of the latter Contracting Party, and
- b) Specifically approved by the competent authorities of the latter Contracting Party.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision on the basis of this Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own arbitrator and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably by consultations and negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall, upon the request of the investor, be settled as follows:

a) By a competent court of the Contracting Party, or;

b) Conciliation or 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, opened for signature in Washington on March 18th, 1965 in case both Contracting Parties have become the parties to the Convention, or;

c) By arbitration by three arbitrators in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure.

3. The award shall be final and binding; it shall be executed according to the national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and other regulations.

4. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

Article 12. Entry Into Force

This Agreement shall enter into force on the thirtieth day following the date of receipt of the latter notification through diplomatic channels by which one Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Denunciation

1. This Agreement shall remain in force for a period of ten (10) years and shall be extended thereafter for the following ten year periods unless, one year before the expiration of the initial or any subsequent period, one Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement. In that case the notice of denunciation shall become effective by the expiration of the current period of ten (10) years.

2. In respect of investments made prior to the date when the notice of denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of denunciation of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE at Bangkok, on 18th February 2000, in two originals, in English language, both texts being equally authentic.

For the Government of the Kingdom of Thailand

For the Government of the Republic of Zimbabwe