

AGREEMENT BETWEEN THE ARAB REPUBLIC OF EGYPT AND THE REPUBLIC OF ZIMBABWE CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Arab Republic of Egypt 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 States,

RECOGNISING that the encouragement and legal 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 purpose of this Agreement:

1. The term "investments" comprises every kind of asset, in particular:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens and pledges;
- b) Shares in companies and other kinds of interests in companies;
- c) Claims to money or to any performance under contract having an economic value;
- d) Intellectual property rights such as copyrights, patents, utility models, industrial designs, trade and business, technical processes and goodwill;
- e) Business concessions under public law, including rights to search for, extract and exploit natural resources;

And any alteration of the form in which assets are invested shall not affect their classification as investments;

2. The term "returns" means the amounts yielded by an investment over any given period such as profit, dividends, interest, royalties or fees;

3. The term "investor" means:

- a) Natural persons deriving their status as nationals of either Contracting Party from the laws in force in either Country.
- b) Companies, corporations, firms and associations incorporated or constituted under the laws in force in either Contracting Party and having their principal place of business in the territory of one of the Contracting Parties.

4. The term "laws" include legislation as well as published administrative rules and regulations.

5. The term "territory" designates the land territory and territorial waters of each of the Contracting Parties.

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. 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 Favourable National Treatment

1. Neither Contracting Party shall, in its territory, subject investments owned or controlled by investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to those of any third State.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their activities in connection with their investments, to treatment less favourable than that which it accords to its own investors or those of any third state.

3. The treatment granted under this Article shall not relate to the benefit of any treatment, preferences 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 relate to the benefit of any advantage which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or any other international agreement regarding matters of taxation.

Article 4. Nationalization and 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 nationalised, expropriated, or subjected to any other measure the effect of which would be tantamount to nationalisation or expropriation in the territory of the other Contracting Party except for reasons of public interest and subject to due process of law. In all cases prompt, adequate, and effective compensation shall be paid. Such compensation shall be equivalent to the net asset value of the affected investment immediately before the date on the which the actual or impending nationalisation, expropriation or other comparable measure becomes publicly known. Such 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. Adequate legal provisions shall have been made in an appropriate manner at or prior to the time of nationalization, expropriation, or other comparable measure as to the determination and payment of such compensation.

Article 5. Compensation for Losses Due to War, Armed Conflict and Revolution

Investors of either Contracting Party whose investments suffer to losses in the territory of the other Contracting Party due to war or other armed conflict, revolution, a state of national emergency or insurrection shall be accorded treatment no less favourable by such other Contracting Party than that which the later Contracting Party accords to its own investors or to those investors of any third State, whichever is the more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be prompt and freely transferable.

Article 6. Transfer of Investments

Subject to its laws, any alteration to which shall not operate to render less favourable the conditions applicable to an investment at the time of its admission or, as the case may be, at the time of the entry into force of this Agreement, each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment in particular:

- a) The principal and additional amounts necessary to maintain or increase the investment;
- b) The returns;
- c) Repayment of loans secured in relation to the investment;
- 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

Article 7. Subrogation

If either Contracting Party makes a payment to any of its investors under a guarantee which it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 12, recognise the assignment, whether by operation of law or pursuant to a legal transaction, of any rights or claim of such investor to the former Contracting Party. The latter Contracting Party to any such assigned right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments, Articles 4, 5 and 6 shall, *mutatis mutandis*, apply to any such assigned right or claim.

Article 8. Currency of Payment and Rate of Exchange

Transfers under Articles 4, 5, 6 or 7 shall be made without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer.

Article 9. 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 provisions shall to the extent that it is more favourable prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it assumed prior to this Agreement with regard to investment in its territory by investors of the other Contracting Party

Article 10. Scope of Application

This Agreement shall apply to all investments made before or 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;
- c) This Agreement shall not apply to any dispute concerning investments which have arisen before its entry into force.

Article 11. Settlement of Disputes

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

2. If a dispute cannot be settled within six months from the start of negotiation, 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 member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has notified the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the periods specified in paragraph (3) above, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decisions on the basis of this Agreement, any agreements in force between the Contracting Parties and general international law, and shall take into account, as may be appropriate, the domestic law of the Contracting Party in which the investment in question is situated.

6. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each

Contracting Party shall bear the cost of its own member and of its representatives at the arbitration proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different decision concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

7. If any dispute between the Contracting Parties is referred to arbitration under the Convention on the Settlement of Investment Disputes between States and National of other States of 18th March, 1965, pursuant to Article 12 of this Agreement, the provisions of this Article 11 shall not apply to any such dispute except:

i) Where any award or decision rendered under the said Convention pursuant to Article 12 of this Agreement is not complied with; or

ii) In the case of any assignment or subrogation referred to in Article 7 of this Agreement.

Article 12. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between a Contracting Party and an investor of the other Contracting Party concerning an investment of such investor in the territory of the former Contracting Party shall as far as possible be settled amicably between the parties concerned.

2. If the dispute is not settled within six months, of the date when it is raised by one of the parties in dispute, it shall, at the request of the investor concerned, be submitted for arbitration. Each Contracting Party hereby consents to the submission of the dispute to arbitration subject to the requirement that the investor concerned shall have exhausted all local judicial remedies. The dispute shall be submitted for arbitration, under the Convention on the Settlement of Investment Disputes between States and National of other States of 18th March, 1965. The arbitral tribunal constituted pursuant to the said Convention shall reach its decisions on the basis of this Agreement, such rules of general international law as they may be applicable and the domestic law of the Contracting Party in which the investment in question is situated.

3. The award shall be final and binding on the Parties; it shall not be subject to any appeal or remedy other than that provided for in the said Convention. The award shall be enforceable in accordance with domestic law of the Contracting Party in which investment in question is situated.

4. During arbitration proceedings or proceedings for enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investment concerned has received compensation under an insurance contract in respect of all or part of investor's damages and losses.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall be ratified and shall enter into force one month after the date of exchange of the instruments for ratification. It shall remain in force for a period of *** years and shall be extended thereafter for an indefinite period unless terminated in writing by either Contracting Party twelve months before its expiration. After the expiration of the period of ten years, this Agreement may be terminated at any time by either Contracting Party giving twelve months written notice to the other Contracting Party.

2. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years from the date of termination of this Agreement.

3. Without prejudice to their right to take such temporary measures as are permitted under the general rules of international law, this Agreement shall remain in force notwithstanding any conflict which may arise between the Contracting Parties. Such measures shall be abrogated at the latest on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations exist between the Contracting Parties at that time.

Done in Cairo on 27 May 1999, in duplicate in Arabic and English languages, both texts being equally authentic, and in case of dispute in interpretation the English text shall prevail.

For the Government of the Arab Republic of Egypt,

Zafer Elbechry,

Minister of State of Planning and International Cooperation

For the Government of the Republic of Zimbabwe,

Herbert Murerwa,

Minister of Finance