

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of Mauritius and the Government of the Republic of Zambia (hereinafter referred to as the "Contracting Parties");

DESIRING to create favourable conditions for greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party;

RECOGNISING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties; and

ACKNOWLEDGING the rights of the Contracting Parties to regulate, on a non-discriminatory basis, the manner and flow of investments within their territories in order to meet national policy objectives;

HAVE agreed as follows:

Article 1. Definitions

(1) In this Agreement,

(a) "investment" means every kind of asset invested or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and in particular, though not exclusively, includes:

(i) movable and immovable property, tangible or intangible, as well as other rights in rem such as mortgages, liens or pledges;

(ii) shares, stock, debentures and any other form of participation in a company;

(iii) claims to money, or to any performance under contract having an economic value;

(iv) industrial and intellectual property rights, in particular copyrights, patents, utility-model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill;

(v) economic value of concession rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

For avoidance of doubt, the term "investment" shall exclude:

(a) Assets acquired solely for a speculative purpose or for purposes other than for economic or business activities;

(b) Acquisition of shares or stocks of a company through the stock exchange for a speculative purpose and held on a short term basis.

A change in the legal form in which assets are invested or reinvested does not affect their character as investments under this agreement.

(b) "return" means the amount yielded by an investment and in particular, though not exclusively includes profit, interest, capital gains, dividends, royalties and fees;

(c) "investor" means in respect to either Contracting Party:

(i) the "national", that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and

(ii) the "company" that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party;

(d) "territory" means -

(1) in the case of the Republic of Mauritius -

(i) all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;

(ii) the territorial sea of Mauritius; and

(iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;

(2) in the case of the Republic of Zambia —

the present territory of the Republic of Zambia including any area which might in future be designated under the law of the Republic of Zambia in accordance with international law as an area within which the Republic of Zambia may exercise sovereign rights or jurisdiction.

Article 2. Scope of the Agreement

(1) This Agreement shall only apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party in conformity with the host Contracting Party's laws, whether prior or after the entry into force of the Agreement.

(2) This Agreement, however, will not be applicable to claims or disputes arising out of events that occurred prior to its entry into force.

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment encourage the making of investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws, shall admit such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.

(3) Investments approved under Article 2 shall be accorded fair and equitable protection in accordance with this Agreement.

Article 4. Treatment of Investments

(1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

(2) Each Contracting Party shall in its territory accord to investors and to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or investors of any third State.

(3) The provisions of paragraph (2) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting Parties is a member;

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating

wholly or mainly to taxation;

(c) special advantages to foreign development finance institutions operating in the territory of either Contracting Party for the exclusive purpose of development assistance through mainly nonprofit activities;

(d) any law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

(4) Each Contracting Party shall observe the obligations under its laws and under this Agreement which bind the Contracting Party and its investors and the investors of the other Contracting Party in matters relating to investments.

Article 5. Compensation for Losses

(1) Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(2) Without derogating from the provisions of paragraph (1) of this Article, investors of either Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; or

(b) destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

shall be accorded restitution or adequate compensation, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be made without delay, and be effectively realizable. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(2) The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that Contracting Party of the expropriation case.

(3) Where a Contracting Party expropriates, nationalises or takes measures having effect equivalent to nationalisation or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this article are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

Article 7. Transfer of Investment Capital and Returns

(1) Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investments and returns, including compensation paid pursuant to the provisions of articles 5 and 6 of this Agreement.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

(1) Disputes arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

(2) If such disputes cannot be settled within a period of six months, from the date on which either party to the dispute requested amicable settlement by delivering a notice in writing to the other party the dispute shall be submitted for resolution, at the election of the aggrieved party, through one of the following means:

(a) the competent court of law of the Contracting Party in whose territory the investment has been made; or

(b) international arbitration in accordance with paragraph (3) of this Article.

Once the investor concerned has made a choice, the choice shall be final.

(3) In the event that the aggrieved party elects to submit the dispute for resolution to international arbitration the said party shall further inform the other party in writing that the dispute be submitted to one of the following bodies:

(a) The International Centre for Settlement of Investment Disputes ('The Centre'), established pursuant to the Convention on the Settlement of Investment Disputes between Parties and Nationals of other Parties opened for signature at Washington DC, 18 March 1965 (the 'Washington Convention'), if both Contracting Parties are parties to the Washington Convention, and the Washington Convention is applicable to the dispute. As long as this requirement is not met, each Contracting Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID;

(b) An arbitral tribunal established under the prevailing Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); those Rules may be modified by the parties to the dispute and submitted to the Appointing Authority who shall be the Secretary General of the Centre as referred to under Article 7 of the Rules;

(c) An international arbitrator or adhoc arbitration tribunal to be established by agreement between the parties to the dispute.

(4) If after a period of three months from written notification of the investor's decision to refer the dispute to international arbitration there is no agreement on any one of the alternatives referred to in paragraph (3), the dispute shall, at the request in writing of the investor concerned, be dealt with in terms of the procedure mutually agreed upon by the parties.

(5) The decision in resolution of the dispute shall be derived by application of the domestic law, including the rules relating to conflicts of law, of the country of the Contracting Party involved in the dispute in whose territory the investment has been made, the provisions of this agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the principles of international law.

(6) The award made by the arbitrator concerned in terms of paragraphs (3) or (4) shall be binding on the parties to the dispute.

(7) Each Contracting Party shall give effect to the award under its domestic law.

Article 9. Settlement of Disputes between the Contracting Parties

(1) The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through negotiations or other diplomatic channels.

(2) If the dispute has not been settled within six months following the date on which such negotiations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing either Contracting Party shall submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article:

(a) Each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third Party as Chairperson of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairperson within four months, from the date on which either Contracting Party informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal;

(b) If the periods specified in paragraph 2(a) above have not been complied with, either Contracting Party may, in the absence of any other arrangement, invite the International Court for the Settlement of Investment Disputes to make the necessary appointments.

(3) The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall make its decision on the basis of the provisions of the present agreement and other agreements concluded between the Contracting Parties. The arbitral tribunal shall reach its decision by a majority of votes. The decisions of the tribunal shall be final and binding upon both Contracting Parties.

(4) Each contracting Party shall bear the costs of its own arbitrator in the arbitral proceedings, the costs of the Chairperson and the remaining costs shall be borne in equal parts by the Contracting Parties or as may be determined by the tribunal.

Article 10. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognise that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

(2) Any payment made by one Contracting Party or its designated Agency to its own investor as provided in paragraph (1) shall not affect the right of such investor to make his claims against the other Contracting Party in accordance with Article 8 provided that the exercise of such a right does not overlap, or is not in conflict with, the exercise of a right in virtue of subrogation under that paragraph.

Article 11. Application of other Rules

(1) If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

(2) Each Contracting Party shall, however, honour any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 12. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

Article 13. Duration and Termination

(1) The Contracting Parties shall notify each other promptly of the fulfillment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the day following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.

(3) In respect of investments approved and/or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract or approval granted to the investor.

(4) The terms of this Agreement may be amended by the mutual agreement of both Contracting Parties, and such amendment shall be effected by exchange of notes between them through the diplomatic channel. The date of entry into force shall be governed by Article 13.

IN WITNESS WHEREOF the undersigned representatives, being duly authorised by their respective governments, have signed and sealed this Agreement in two originals in the English Language, both texts being equally authentic.

DONE at Port Louis on the 14 day of July 2015.

Hon. Seetannah LUTCHMEENARAIDOO, GCSK

Minister of Finance and Economic Development

For the Government of the Republic of Mauritius

Hon. Mrs. Margaret D. MWANAKATWE

Minister of Commerce, Trade and Industry

For the Government of the Republic of Zambia