

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

WHEREAS the Republic of Zimbabwe and United Arab Emirates the (hereinafter jointly referred to as the "Contracting Parties" and singularly as "the Contracting Party");

DESIRING to create favourable conditions for investments in both Contracting Parties and to intensify the co-operation between private enterprises in both Contracting Parties with a view to stimulate the productive use of resources;

RECOGNISING the growing importance of the progressive liberalisation of investment to stimulate the initiative of investors to promote prosperity in both Contracting Parties;

MINDFUL that fair and equitable treatment of investments will enhance the mutual flow of capital between the Contracting Parties;

CONVINCED that this agreement will contribute to economic development of the two Contracting Parties:

NOW, THEREFORE, the Parties have agreed as follows -

Article 1. DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" means every kind of asset which is owned or controlled directly or indirectly by a Contracting Party in the territory of the other Contracting Party and shall include in particular, but not exclusively:

(a) tangible and intangible, movable and immovable property as well as any other rights, such as leases, mortgages, liens, pledges, privileges, guarantees;

(b) an enterprise, shares, bonds, stock or other forms of participation in a company;

(c) returns reinvested, claims to money and claims to performance pursuant to contracts having an economic value;

(d) industrial and intellectual property rights, including copyrights, patents, tradenames, technology, trademarks, know-how and any other similar rights;

(e) loans and other financial instruments provided for the fulfilment of investments; and

(f) sovereign debts of a Contracting Party or a debt of a Contracting Party enterprise.

2. Natural resources shall not be covered by this Agreement in case of the United Arab Emirates.

3. Claims to money involving the kind of interests set out in (a) to (d) above, but not claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d) above.

4. Any change of the form in which assets are invested does not affect their character as an investment.

5. The term "returns" means the amounts yielded by an investment and includes, in particular, though not exclusively profits, interests, capital gains, dividends and royalties.

6. Returns, and in case of reinvestment amounts yielded from the reinvestment, shall be accorded the same protection as the investment in accordance with the provisions of this Agreement.

7. The term "investor" means with respect to each Contracting Party:

(a) natural persons having the citizenship or nationality of either Contracting Party in accordance with its laws;

(b) an entity established in accordance with the laws and regulations of the Contracting Party, such as companies, firms, and development finance institutions; or

(c) The Government of a Contracting Party and its Financial Institutions.

8. The term "territory" means with respect to -

(a) the Republic of Zimbabwe: the territory of the Republic of Zimbabwe means land, internal waters and the airspace above them over which the Republic of Zimbabwe exercises sovereignty and jurisdiction in accordance with international law;

(b) the United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in accordance with international law and the law of United Arab Emirates sovereign rights; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in its water, seabed and subsoil in connection with the exploration for or the exploitation of the natural resources by virtue of its law and international law.

9. The term "laws and regulations" includes legislations as well as published administrative rules and regulations.

10. The term "ICSID" shall mean the International Centre for Settlement of Investment Dispute, established under the Convention on the Settlement of Investment Dispute between states and Nationals of other States (the "ICSID Convention"), opened for signature in Washington, D.C, on March 18, 1965.

11. The term "owned directly or indirectly" shall mean if the investor of a Contracting Party owns more than fifty percent (50%) share of the company.

12. The term "control" shall mean if the investor of a Contracting Party appoints the majority of the board of directors of a company.

Article 2. PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its laws and regulations.

2. Investments of investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. For more certainty protection and security shall not be beyond the treatment that the Contracting Party accords to its own residents and third party within the Contracting party laws and regulation to protect its own security and public order.

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

4. Each Contracting party shall observe any obligation it may have entered with regard to investments of investors of the other Contracting Party.

Article 3. FAIR AND EQUITABLE TREATMENT

1. Investments and returns of investors of either Contracting party made in accordance with its laws and regulations shall at all times be accorded fair and equitable treatment.

2. Neither Contracting party shall hamper, by arbitrary or discriminatory measures, the development, management, use and expansion sale and if it's the case, the liquidation of such investments.

3. For greater certainty, "fair and equitable treatment" means protection against measures or series of measures that will constitute -

(a) denial of justice in criminal, civil or administrative proceedings;

(b) fundamental breach of due process, in judicial and administrative proceedings; or

(c) manifest arbitrariness.

4. Each Contracting Party shall as far as possible make publicly available, its laws, regulations that related to investments and give the right for the investor to access to its courts of justice, administrative tribunals and agencies and all other judicial authorities.

5. Each Contracting Party shall in accordance with its laws and regulations ensure to investors of the other Contracting Party that in case of liquidation of an investment, the proceeds from liquidation shall be accorded the same protection and treatment.

Article 4. NATIONAL TREATMENT

1. Once the investment is admitted, each Contracting Party in accordance with its laws and regulations shall accord in its territory to investments and returns of investors of the other Contracting Party, a treatment no less favourable than that which it accords to its nationals investments with respect to development, management, maintenance, use, expansion, sale or other disposal of their investment.

2. Paragraph 1 of this Article shall not apply to the government procurement at all levels, subsidy, grants or loans that are granted to Small and Medium Enterprises.

Article 5. MOST FAVOURED NATION TREATMENT

1. With respect to the most favoured nation treatment, each Contracting Party shall accord in its territory to the investors of the other Contracting Party with regard to development, management, maintenance, use, expansion, sale or other disposal of their investment, a treatment which is no less favourable than that which it accords to investors of any third State, whichever is more favourable to the investors concerned.

2. Notwithstanding any other bilateral investment agreement the Contracting Parties have signed with other States before or after the entry into force of this Agreement, the most favoured nation treatment shall not apply to procedural or judicial matters.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of -

(a) any existing or future customs union or economic or monetary union, free trade area or similar international agreements to which either of the Contracting Party is or may become a party in the future; or

(b) any international agreement or arrangement, wholly or partially related to taxation.

Article 6. TRANSPARENCY

1. Each Contracting Party shall give sympathetic consideration and shall, with respect to availability, as far as possible publish, or otherwise make publicly available, its laws, regulations, procedures which may affect the operation of the Agreement.

2. No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality, or any other information as shall be agreed upon by the Contracting Parties from time to time.

Article 7. COMPENSATION FOR DAMAGE OR LOSS

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the latter Contracting Party, treatment as regards restitution, compensation or other settlement, not less favourable than the treatment that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from a

(a) requisitioning of their property or part thereof by its forces or authorities; or

(b) destruction of their property or part thereof by its forces or authorities which was not caused in combat or was not required by the necessity of the situation;

shall be accorded prompt, adequate and effective compensation or restitution for the damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

Article 8. PROHIBITION OF PERFORMANCE REQUIREMENT

1. Neither Contracting Party shall, in its territory, impose mandatory measures on investments by investors of the other Contracting Party, concerning the purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects. This paragraph shall not apply to measures taken in accordance with the laws and regulations in the course of government procurement of goods and services at any level of the government of the Contracting Party.

2. Neither Contracting Party shall -

(a) restrict export of goods and services; and

(b) impose conditions to achieve a given level or percentage of domestic content.

Article 9. EXPROPRIATION

1. A Contracting Party shall not expropriate or nationalise directly or indirectly in its territory an investment of an investor of the other Contracting Party nor take any measures having equivalent effect (hereinafter referred to as "expropriation") except if the following conditions occur simultaneously:

(a) for a purpose which is in the public interest;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known, whichever is the earlier.

3. Where the fair market value cannot be ascertained, the compensation shall be determined in equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement and the book value.

4. Compensation shall be paid without delay, be effectively realisable and freely transferable.

5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

6. Where a Contracting Party expropriates the assets of a legal entity that is constituted in its territory according to its laws and regulations and in which investors of the other Contracting Party participate, it shall ensure that the provisions of this Article are applied in a way that it guarantees such investors adequate and effective compensation.

Article 10. IMMUNITY OF THE GOVERNMENT MOVABLE AND IMMOVABLE ASSET

1. The movable and immovable assets of either Contracting Party, or local governments or local authorities shall not be subjected to nationalisation, expropriation, or sequestration directly or indirectly and should be immune from the jurisdiction of the local courts in either of Contracting Parties' territory.

2. Government assets shall not be subject to any of the above mentioned measures by any third party and shall be immune from the jurisdiction of the local courts.

Article 11. TRANSFERS

1. In accordance with its laws and regulations in force in the territory of the Contracting Party, each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular -

- (a) initial capital and additional amounts to maintain or increase an investment;
- (b) returns;
- (c) proceeds from the sale or liquidation of all or any part of an investment;
- (d) payments of compensation under Articles 7 and 9 of this Agreement;
- (e) payments under Article 10 of this Agreement; and
- (f) payments arising out of the settlement of an investment dispute.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made without delay and in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraph 1 and 2 of this Article, a Contracting Party may in accordance with its laws and regulations, in good faith and in equitable and non-discriminatory manner temporarily prevent the transfers to apply its laws and regulations relating to -

- (a) protection of creditors in bankruptcy proceedings; and
- (b) criminal offences.

Article 12. SUBROGATION

1. If one Contracting Party or its designated agency (for the purpose of this Article: the "guarantor") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise -

- (a) the assignment to the guarantor by law or by legal transaction of all the rights and claims of the party indemnified; and
- (b) that the guarantor is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The guarantor shall be entitled in all circumstances to -

- (a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and
- (b) any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

3. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Notwithstanding paragraph 1 of this Article, subrogation shall take place in the Contracting Party only after the approval of the competent authority of that Contracting Party.

Article 13. DISPUTE SETTLEMENT BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. An investor that has a dispute with a Contracting Party should initially attempt to settle it through negotiations.

2. To start negotiations, the investor shall deliver to the Contracting Party a written notice. The notice shall specify -

- (a) the name and address of the disputing investor;
- (b) the provisions of this Agreement alleged to have been breached;
- (c) the factual and legal basis for the claim; and
- (d) the remedy sought and the amount of damages claimed.

3. When required by the Contracting Party, if the dispute cannot be settled amicably within three months from the moment

of receipt of the written notice, the dispute shall be submitted to the competent court of the Contracting Party in whose territory the investment is made.

4. If the dispute cannot be settled amicably within six months from the moment of receipt of the written notice or from the start of the conciliation referred to in paragraph 3 of this Article, the dispute shall upon the request of the investor be settled as follows -

(a) by 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 18th March, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to this ICSID; or

(b) by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), accepted by both Contracting Parties. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such dispute to the tribunal mentioned.

5. The award shall be final and binding, provided that the provision of Articles 42-54 of the ICSID Convention and Regulations have been met. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations.

6. 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 an insurance in respect of all or a part of its losses.

7. When the investor and any designated entity of a Contracting Party or its local government have concluded an agreement concerning the investments of the investor, the dispute settlement procedure stipulated therein shall apply.

Article 14. 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 through diplomatic channels.

2. If a dispute under paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted ad hoc. Each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairperson. Such members shall be appointed within two 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 chairperson of which shall be appointed within two 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 (ICJ) to make the necessary appointments if both Contracting Parties are members. In the case that both Parties are not members of the ICJ, the Secretary General of the ICSID shall make the necessary appointment with the mutual consent of the Contracting Parties. The appointed members of the arbitral tribunal shall be a national of a State that has diplomatic relations with the Contracting parties.

5. The arbitral tribunal shall establish its own rules of procedure unless the Contracting Parties decide otherwise.

6. The arbitral tribunal shall reach its decision by virtue 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 member and of its legal representation in the arbitration proceedings. The costs of the chairperson and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may, however, in its award determine another distribution of costs.

Article 15. APPLICATION OF THE AGREEMENT

This Agreement shall apply to the existing investment and to the investment which will be made after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen nor any claim that was settled before its entry into force.

Article 16. CONSULTATIONS

The Contracting Parties shall, at the request of either Party, hold consultations on any matter relating to the implementation or application of this Agreement including settlement of investment dispute. These consultations shall be held on the proposal of one of the Contracting Parties at a place and time to be agreed upon through diplomatic channels.

Article 17. LIMITATION OF BENEFITS

1. A Contracting Party shall deny the benefits of this Agreement to an investor of the other Contracting Party if -

(a) investors of a non-Contracting Party own or control the investment and that non-Contracting Party has no diplomatic relations with the host State; or

(b) the main purpose of the acquisition of the nationality of that Contracting Party by that investor was to obtain benefits under this Agreement that would not otherwise be available to the investor; or

(c) investors do not maintain substantial business activities in the territory of either Contracting Party; or

(d) investor structures its investment, for instance through intermediary entities of a third country, with the sole purpose of benefiting from this Agreement.

2. Prior to denying the benefits of this Agreement the denying Contracting Party shall notify and consult the other Contracting Party of such denial of benefits.

Article 18. MEASURES OF HEALTH, SECURITY, ENVIRONMENT AND NATIONAL LABOUR STANDARDS

Neither Contracting Party shall abrogate or derogate from their legislation on health, security, environment or their commercial or industrial labour standards as means of encouraging investments by investors of the Contracting Party or any non-Contracting Party.

Article 19. ENTRY INTO FORCE, AMENDMENTS, DURATION AND TERMINATION

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

2. This Agreement may be amended in writing by the mutual consent of the Contracting Parties. Such amendments shall enter into force according to the same procedure as the Agreement.

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

4. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date the termination of this Agreement became effective.

5. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

IN WITNESS WHEREOF, the undersigned duly authorised have signed this Agreement.

Done at HARARE on 16th June, 2018, in duplicate, in the Arabic, and English languages, both texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

FOR THE REPUBLIC OF ZIMBABWE

