

Agreement between the Swiss Confederation and the Republic of Zambia on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Republic of Zambia, Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) the term means investor in respect of either Contracting Party,

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established in accordance with the law of any country, which are directly or indirectly controlled by nationals of that Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party.

(2) The term "investment" includes all categories of assets and in particular:

(a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having an economic value;

(d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin), know-how and goodwill;

(e) The concessions under public law, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

(3) The term territory includes the maritime areas adjacent to the coastal State may exercise of their sovereignty or jurisdiction in accordance with international law.

Article 2. Encouragement , Admission

(1) Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue the required authorisations in connection with such investments and with the carrying out of licensing agreements, technical, commercial or

administrative assistance. each Contracting Party shall, whenever necessary, issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 3. Protection , Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments. in particular, each Contracting Party shall issue the authorisations referred to in article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall in its territory fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that granted by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if the latter is more favourable.

(3) The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market or by virtue of an agreement for the avoidance of double taxation.

Article 4. Free Transfer

Each Contracting Party in whose territory of investors of the other Contracting Party has made investments, to grant those investors the free transfer of payments related to these investments, including:

- (a) Profits, dividends, interests and other current income;
- (b) Such as loans;
- (c) The amounts to be used to cover expenses relating to the management of the investment;
- (d) Royalties and other payments deriving from rights enumerated in article 1 (2), letter (c), (d) and (e) of this Agreement;
- (e) Additional contributions of capital necessary for the maintenance or development of the investments;
- (f) The proceeds of the sale of or the partial or total liquidation of an investment including capital gains.

Article 5. Dispossession , Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other contracting party except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the amount of compensation shall include interest, shall be paid in the currency of the country of origin of the investment and shall be paid without delay to the person entitled thereto without regard to its residence or domicile.

(2) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other valid consideration.

Article 6. Investments Made Prior to the Agreement

This Agreement shall also apply to investments in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party prior to the entry into force of this Agreement.

Article 7. More Favourable Provisions

Notwithstanding the conditions laid down in this Agreement, the more favourable conditions which have been or will be agreed by one of the Contracting Parties with investors of the other Contracting Party shall apply.

Article 8. Principle of Subrogation

Where a Contracting Party has provided any financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other contracting party and without prejudice to the provisions of article 10 of this Agreement (disputes between contracting parties), consultations will take place between the parties concerned.

(2) If these do not resolve consultations within a period of twelve months, and if the investor concerned consents in writing, the dispute may be submitted to the International Arbitration Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States.¹ pour the Settlement of Investment Disputes between States and Nationals of Other States.

Each party may institute proceedings by addressing a request to that effect to the Secretary General of the Centre as provided for in articles 28 and 36 of the Convention. where the parties disagree on whether conciliation or arbitration is the most appropriate procedure, the choice of the investor concerned. the Contracting Party which is a party to the dispute may, at any stage of the proceedings or enforcement of an award an examination of the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(3) A company which is incorporated or constituted under the laws in force in the territory of the Contracting Party and which, before the birth of diffé-rend, was controlled by nationals or companies of the other Contracting Party, shall be treated as defined by the Washington Convention and in accordance with article 25 (2) (b), as a company of the other contracting party.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless

(a) The Secretary-General of the Centre or a conciliation commission or an arbitral tribunal decides that the dispute is not within the jurisdiction of that State; or

(b) The other contracting party does not comply with the award rendered by an arbitral tribunal.

Article 10. Disputes between Contracting Parties

(1) Disputes between contracting parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out this function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) The decisions of the Tribunal are final and binding on the contracting parties.

Article 11. Observance of Commitments

Each Contracting Party shall at all times compliance with the obligations assumed by it in respect of investments of investors of the other contracting party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the day on which the two Governments have notified each other that the constitutional formalities required for the conclusion and entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced in writing six months before the expiry of this period, there shall be considered on the same terms as renewed for a period of two years, and so on.

(2) In the event of termination, the provisions of articles 1 to 11 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.

Done at _____ on _____ in duplicate, in French and English, each text being equally authentic.