Agreement between the Government of the Republic of Finland and the Government of the Republic of Zambia on the Promotion and Protection of Investments

The Government of the Republic of Finland and the Government of the Republic of Zambia, hereinafter referred to as the "Contracting Parties",

RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

AGREEING that a stable framework for investment will contribute to maximising the effective utilisation of economic resources and improve living standards;

RECOGNISING that the development of economic and business ties can promote respect for internationally recognised labour rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset established 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, including in particular, though not exclusively:

(a) Movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;

(b) Reinvested returns;

(c) Shares in and stocks and debentures of a company or any other forms of participation in a company;

(d) Claims to money or rights to a performance having an economic value;

(e) Intellectual property rights, such as patents, copyrights, trade marks, industrial designs, business names, geographical indications as well as technical processes, know-how and goodwill; and

(f) Concessions conferred by law, by an administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party, but actually owned or controlled, directly or indirectly, by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations

of the former Contracting Party. Any change in the form in which assets are invested or reinvested does not affect their character as investments. 2. The term "returns" means the amounts yielded by investments and shall in particular, though not exclusively, include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment.

3. The term "investor" means, for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement:

(a) Any natural person who is a national of either Contracting Party in accordance with its laws; or

(b) Any legal entity such as company, corporation, firm, partnership, business association, institution or organisation, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.

4. The term "territory" means in the case of:

(a) The Republic of Finland, the land territory, internal waters and territorial sea of the Republic of Finland and the airspace above, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Finland exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas, and

(b) The Republic of Zambia, the land territory, internal and territorial waters of the Republic of Zambia and the airspace above, over which the Republic of Zambia exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law.

Article 2. Promotion and Protection of Investments

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

2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments.

3. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is the more favourable to the investors or investments.

4. Neither Contracting Party shall mandate or enforce in its territory measures on investments by investors of the other Contracting Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects. Such requirements do not include conditions for the receipt or continued receipt of an advantage.

Article 4. Exemptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(a) Any existing or future free trade area, customs union, common market, economic and monetary union or other similar

regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party, or

(b) Any existing or future agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation, or

(c) Any existing or future multilateral agreement relating wholly or mainly to investments

Article 5. Expropriation

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures, direct or indirect, having an effect equivalent to expropriation or nationalisation such as freezing of assets or blocking an investment (hereinafter referred to as "expropriation"), except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against adequate and effective compensation without delay.

2. Such compensation shall represent the current value of the investments affected and shall amount to the value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier.

3. The compensation value shall be determined in accordance with generally accepted principles of valuation and shall be fully realisable and paid without any restriction or delay. It shall be immediately transferable in a convertible currency and include interest at the prevalent commercial rate for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment.

4. The Contracting Parties affirm that when a Contracting Party expropriates the assets or a part thereof of a company which has been incorporated or constituted in accordance with the law in force in its territory, and in which investors of the other Contracting Party own shares, or when the object of expropriation is a joint venture constituted in the territory of a Contracting Party, the host Contracting Party shall ensure that the articles of association and possible other relevant documents of the companies or joint-ventures concerned, as they exist at the time of expropriation, are fully respected.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of the host Contracting Party.

Article 6. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, 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, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one 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 its investment or a part thereof by the latter's armed forces or authorities, or

(b) Destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation, which in either case shall be adequate and effective and paid without delay. With respect to compensation the value shall be determined in accordance with generally accepted principles of valuation and shall be fully realisable. It shall include interest at the prevalent commercial rate for the currency of payment from the date of requisitioning or destruction until the date of actual payment.

Article 7. Free Transfer

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments and transfer payments related to investments. Such payments shall include in particular, though not exclusively:

(a) Principal and additional amounts to maintain, develop or increase the investment;

(b) Returns;

(c) Proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares;

(d) Amounts required for the payment of expenses, which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, licence fees or other similar expenses;

(e) Compensation payable pursuant to Articles 5, 6, 8 and 9;

(f) Earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made without any restriction in a freely convertible currency of the choice of the investor and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be immediately transferable.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

4. In case of a delay in transfer caused by the host Contracting Party, the transfer shall also include interest at a commercial rate established on a market basis for the currency in question from the date on which the transfer was requested until the date of actual transfer and shall be borne by that Contracting Party.

5. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party concerned may, in the event of serious balance-of-payments difficulties or threat thereof, adopt restrictions on transfer payments related to investments consistent with its other obligations under international law. Such restrictions shall be equitable, non-discriminatory and applied in good faith to avoid adverse effects on the principle of free transfer ensured by this Agreement. The duration of the restrictions shall be applied only for a period that is absolutely necessary but shall in no case exceed six (6) months.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against noncommercial risk given in respect of an investment of an investor in the territory of the other Contracting Party under a system established by law, governmental regulation or contract, the latter Contracting Party shall recognise the assignment of any right or claim of such an 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 9. Disputes between an Investor and a Contracting Party

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted to:

(a) The competent courts of the Contracting Party in whose territory the investment is made; or

(b) Arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or

(c) Arbitration by the Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Convention referred to in subparagraph (b) of this paragraph; or

(d) An ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(e) Any other previously accepted ad hoc arbitration tribunal.

3. Once the investor has submitted the dispute to one of the competent courts of the host Contracting Party as stipulated in paragraph 2(a) of this Article or to one of the arbitration procedures stipulated in paragraph 2(b) to 2(e) of this Article, the choice of the procedure is final and cannot be referred to further arbitration.

4. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

5. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

6. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by the date indicated in the award.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, 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 is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.

Article 11. Permits

1. Each Contracting Party shall, subject to its laws and regulations, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.

2. Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party, and who are essential for the enterprise, as long as these persons continue to meet the requirements of this paragraph. Immediate family members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Contracting Party.

Article 12. Application of other Rules

1. If the provisions of law 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 regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

Article 13. Application of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force.

Article 14. General Derogations

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.

2. Provided that such measures are not applied in a discriminatory or arbitrary manner, or do not constitute a disguised restriction on foreign investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting measures to maintain public order, or to protect public health and safety, including environmental measures necessary to protect human, animal or plant life.

3. The provisions of this Article shall not apply to Article 7 paragraph l.(e) of this Agreement.

Article 15. Transparency

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

Article 16. Consultations and Amendments

1. The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through appropriate channels.

2. Amendments to this Agreement resulting from such consultations shall take effect in accordance with the provisions of Article 17 of this Agreement.

Article 17. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when their constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of twenty (20) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 16 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

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

Done in duplicate at Helsinki on 7th September 2005 in the English language.

For the Government of the Republic of Finland

For the Government of the Republic of Zambia