

# Agreement between the Government of the Republic of India and the Government of the Republic of Zimbabwe Concerning the Promotion and Reciprocal Protection of investments

The Government of the Republic of India and the Government of the Republic of Zimbabwe (hereinafter referred to as the "Contracting Parties").

Desiring to intensify economic co-operation between the two States,

Intending to create conditions favourable for investments by investors of either State in the territory of the other State,

Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(a) "investments" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

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

(ii) shares, stocks and debentures of a company and any other similar forms of participation in a company;

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

(iv) intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

(v) business concessions under public law or under contract including rights to search for, extract and exploit natural resources;

(b) "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

(c) "investors" means any national or company of a Contracting Party.

(d) "nationals" means natural persons deriving their status as nationals of a Contracting Party from the laws in force in that Contracting Party.

(e) companies means:

In respect of India:

Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India,

In respect of Zimbabwe:

Corporations, firms and associations incorporated or constituted under the laws in force in Zimbabwe and having their principal place of business in Zimbabwe.

(f) Territory means

In respect of India:

The territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

In respect of Zimbabwe:

The land territory of the Republic of Zimbabwe and the airspace above it.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments into its territory in accordance with its laws and regulations.
2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

## **Article 3. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.
2. In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.
3. The provisions of paragraph (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:
  - (a) any existing or future customs unions or similar international agreement to which it is or may become a party, or
  - (b) Any matter pertaining wholly or mainly to taxation.

## **Article 4. Expropriation**

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure having effect equivalent to expropriation or nationalization in the territory of the other Contracting Party except for a public purpose, in accordance with law and on a non discriminatory basis and against fair and equitable compensation.
2. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or other comparable measure becomes publicly known, whichever is earlier. Such compensation shall be paid without unreasonable delay and shall carry the usual commercial interest until the date of payment and shall be effectively realisable and freely transferable.
3. The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.
4. Where a Contracting Party expropriates 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 this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

## **Article 5. Compensation for Losses**

Investors of one 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 or civil disturbances 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, no 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.

## Article 6. Repatriation of Investments and Returns

1. Each Contracting Party shall permit all funds of an investor of the Other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to their share-holdings;
- (c) Repayments of any loan including interest thereon, relating to the investment;
- (d) Payment of royalties and services fees relating to the investment;
- (e) Proceeds from sales of their shares;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation;
- (g) The earnings of citizens / nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Articles 5 and 6 of this Agreement.

(3) Unless otherwise agreed to between the Parties, currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

## Article 7. Subrogation

If either Contracting Party or its designated agency makes a payment to any of its investors under a guarantee which it has assumed against noncommercial risks in respect of investments in the territory or the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognise the assignment, whether by operation of law or pursuant to a legal transaction, of any right or claim of such investor to the former Contracting Party. The latter Contracting Party shall also recognise the subrogation of the former 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. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled through negotiations.

2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc for each individual case 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 two-Contracting Parties. Such members shall be appointed within two months, and such chairman within four months from the date on which either Contracting Party has notified the other Contracting Party of its intention 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 necessary appointments. 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 other relevant Agreements in force between the Contracting Parties and general International Law.

6. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representation 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. The arbitral tribunal shall determine its own procedure.

7. The provisions of this Article shall not apply to any dispute referred to arbitration under Article 9 of this Agreement, except:

- i) where any award or decision rendered under Article 9 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 9. 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 to the dispute.

2. If any such dispute is not settled within six months from the date when it is raised by one of the parties to the dispute, either party to the dispute may submit such dispute:

- a) to the competent judicial, arbitral or other independent bodies of the host Contracting Party, if both the parties to the dispute
- b) to arbitration under the Convention on Settlement of Investment Disputes between States and Nationals of other States of 18th March, 1965, if both the Contracting Parties are Parties to the 1965 Convention; or,
- c) to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:
  - i) The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.
  - ii) The parties shall appoint their respective arbitrators within two months.
  - iii) The arbitral award shall be made in accordance with the provisions of this Agreement.
  - iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

3. The award rendered by the arbitral tribunal constituted under the 1965 Convention or under the UNCITRAL Rules shall be binding on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention or the Rules. The award shall be enforceable in accordance with the domestic law of the Contracting Party in which the investment in question is situated.

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

## **Article 10. Entry and Sojourn of Personnel**

A Contracting Party shall, subject to its laws and regulations applicable from time to time relating to the entry and sojourn of noncitizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

## **Article 11. Scope 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, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

## **Article 12. Application of other Rules**

If the provisions of laws 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 by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

### **Article 13. Applicable Laws**

(1) Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) Notwithstanding paragraph (1) of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

### **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall be subject to ratification and shall enter into force one month after the date of exchange of Instruments of Ratification.

2. This agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

3. Notwithstanding termination of this Agreement pursuant to paragraph (2) of this Article, the Agreement shall continue to be effective for a further period of ten years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Montego Bay on this 10th day of February 1999 in two originals each in the Hindi and English, both texts being equally authentic.

In case of any divergence, the English text shall prevail.

For the Government of the Republic of India

For the Government of the Republic of Zimbabwe