

Agreement Between
The Government of the Kingdom of Morocco
And
The Government of the Republic of Zambia
On
The Promotion and Protection of Investments

The Government of the Kingdom of Morocco

And

The Government of the Republic of Zambia,

Hereinafter referred to as the "Contracting Parties":

Desiring to strengthen economic cooperation through the creation of favourable conditions for investments by investors from one Contracting Party within the territory of the other Contracting Party;

Considering the positive impact this Agreement will have on promoting business connections and enhancing confidence in the field of investments;

Recognizing that the promotion and reciprocal protection of investments will encourage business initiatives and increase economic prosperity in both Contracting Parties;

Convinced that the objectives of this Agreement should be achieved without undermining the right of the Contracting Parties to regulate for the public interest and without compromising the adoption of measures aimed at promoting sustainable development and inclusive growth;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investment" shall mean all types of assets invested by an investor of one Contracting Party in the territory of the other Contracting Party, and includes, but is not limited to:

- a. Movable and immovable property, and any other property rights such as mortgages, liens, pledges, and other similar rights according to the laws.
- b. Shares, stocks, bonds, and any other form of participation in companies.
- c. Cash debt or any debt with economic value directly related to an investment.
- d. Intellectual property rights, as defined in multilateral agreements concluded under the auspices of the World Intellectual Property Organization to which both Contracting Parties are parties, including copyrights, franchises, trademarks, industrial

designs, patents, technical processes, trade names and other industrial property rights,

e. Public law concessions, granted by law or contract, including concessions for exploration, cultivation, extraction, or exploitation of natural resources including those located within the territorial waters under the jurisdiction of the Contracting Party concerned.

For the purposes of this Agreement, and for greater certainty, investment does not include:

- Debt securities issued by a Contracting Party or loan to a Contracting Party or to a governmental institution.
- Portfolio investments.
- Cash debts with a maturity of less than three years
- Bank documentary credit
- Cash debts arising solely from commercial contracts for the sale of goods and services.
- Restructured debt linked to a commercial transaction such as trade financing.

Any change in the legal form in which the assets are invested or reinvested shall not affect their investment character, provided that such change does not conflict with the requirements of this Agreement and the legislation of the Contracting Party on whose territory the investment was made.

These investments must be made in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

2. The term "Investor" means any natural or legal person of a Contracting Party who invests in the territory of the other Contracting Party:

a. The term "natural person" means any natural person having the nationality of one Contracting Party, having his status as a national under the law of the Contracting Party, and who has made investments in the territory of the other Contracting Party; provided, however, that the natural person who has dual nationality is a national only of the State in which his nationality is dominant and effective;

b. The term "legal person" means any entity established or incorporated in accordance with the laws and regulations of one of the Contracting Parties and carrying out an economic activity falling within the scope of application of this Agreement and effectively controlled, directly or indirectly, by nationals of that Contracting Party. For greater certainty, a legal person whose principal place of business is in the territory of a Contracting Party must have a real and continuous relationship with the economy of that Contracting Party.

A Contracting Party may deny the benefits of this Agreement to an investment that is owned or controlled by persons holding the nationality of a state with which the Contracting Party has no diplomatic relations. This investment shall not benefit from this Agreement.

3. The term "Returns" refers to amounts yielded by investments, including but not limited to profits, interests, dividends, and royalties.

4. The term "Territory" refers to:

a. For the Kingdom of Morocco: the territory of the Kingdom of Morocco, including any maritime area beyond the territorial waters of the Kingdom of Morocco that has been or will be designated in the future under the legislation of the Kingdom of Morocco and international law, as an area within which the Kingdom of Morocco may exercise its rights relative to seabed and maritime subsoil including natural resources.

b. For the Republic of Zambia: "Territory" means the territory of a Contracting Party, including the territorial waters, airspace and any maritime area beyond the territorial waters and maritime zone of that Contracting Party, which has been or will hereafter be designated under the national law of the Contracting Party concerned, in accordance with international law, as an area over which the Contracting Party may exercise its sovereign rights and jurisdiction.

5. "Convertible currency" means a currency that is widely used for international transactions and is widely convertible in the major world exchange markets.

Article 2. Promotion and Admission of Investments

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

The extension, modification, or transformation of an original investment, made in accordance with the laws and regulations in force in the territory of the Contracting Party, shall be treated as a new investment for the purposes of this Agreement.

2. Each Contracting Party shall grant, in accordance with its domestic laws and regulations, all necessary authorizations in connection with such investments and execute licensing agreements and contracts for technical, commercial, or administrative assistance.

3. The Contracting Parties shall consult with each other to promote and facilitate investment opportunities in their territories.

4. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law and the provisions of this Agreement. These investments shall enjoy full protection and security.

Neither Contracting Party shall impair, in any way, by unreasonable, arbitrary, indiscriminate or discriminatory measures, the management, maintenance, use, enjoyment or ownership of investments made by investors of the other Contracting Party

Investment Returns, in case reinvested according to the laws and regulations of the Contracting Party in whose territory the investment was made, shall enjoy the same protection as the original investment.

5. Depending on the size and nature of an investment

a. Investments meet or exceed national and internationally accepted standards of corporate governance for the sector concerned, particularly with regard to transparency and accountability practices.

b. The investments establish and maintain, whenever possible, local community linkages, in accordance with internationally accepted standards when available.

6. Each Contracting Party shall consider in good faith, in accordance with its laws and regulations relating to the entry, residence and work of natural persons, and give due consideration to key personnel, including managerial and technical personnel, employed for the purposes of investments in the territory of the Contracting Party in which they are made. For the purpose of entry, residence and work in its territory, the immediate family members of such key personnel shall also be accorded similar treatment with respect to entry and temporary stay in the host Contracting Party.

7. Nothing in this Agreement shall be construed as preventing any Contracting Party from taking measures it deems necessary for reasons of public security or public order or the protection of public health or the environment, provided that the measures are not applied in a discriminatory, arbitrary or unreasonable manner.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord to investments made by investors of the other Contracting Party in its territory treatment no less favourable than that which it accords, in like circumstances, to investments made by its own investors or by investors of any third state, whichever is more favourable to the investor concerned.

Each Contracting Party shall grant, in its territory, to investors of the other Contracting Party, with respect to activities connected with their investments, treatment no less favourable than that which it grants, in similar circumstances, to its own investors or to investors of the most favoured nation. The most favourable treatment shall be taken into account for the investor concerned.

2. Notwithstanding paragraphs 1 and 2 above, no investor shall be entitled to claim most-favored-nation treatment in order to submit a dispute arising out of this Agreement to any dispute settlement procedure other than that provided for in this Agreement.

3. The provisions of paragraph (1) shall not be interpreted so as to oblige one of the Contracting Parties to grant investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a. any existing or future customs union, free trade area or common market or any similar international agreement or any interim arrangement leading to such a customs union, free trade area or common market to which either Contracting Party is or is likely to be a party;

b. Any international agreement or arrangement relating wholly or partly to taxation, or any domestic legislation relating wholly or partly to taxation;

c. Any law or other measure the purpose of which is to promote and achieve equality in its territory, or which aims to protect or assist persons or categories of persons or the disadvantaged in an unfair discriminatory manner in its territory, provided that such laws and measures are not applied in a manner that constitutes a means of unjustified or arbitrary discrimination.

Article 4. Expropriation and Compensation

1. Neither Contracting Party shall take against investors of the other Contracting Party measures of nationalization, expropriation, or any other measure having an effect similar to nationalization or expropriation (hereinafter referred to as "expropriation"), unless such measures:

a. For public interest purposes

b. Non-discriminatory

c. Against actual and adequate compensation

d. In accordance with due process of law

2. In accordance with the right of States to regulate and the principles of customary international law relating to police powers, non-discriminatory legislative and regulatory measures taken in good faith by a Contracting Party to protect or improve legitimate objectives of the general welfare, such as public health, security, the environment, employment, or those relating to public taxation or a general change in the value of the national currency, shall not be considered an indirect expropriation under this Article and shall therefore not give rise to any compensation.

3. Compensation for expropriation shall:

a. Be paid without undue delay, in accordance with the legal system of the Contracting Party which has taken the expropriation measure.

b. Amount to the fair market value of investment expropriated immediately before the actual date of expropriation ("the expropriation Date")

c. Not reflect a negative change in market value resulting from an intention to expropriate prior to the date of expropriation;

d. The compensation is calculated in a convertible currency based on the prevailing market exchange rate for such currency on the valuation date and includes interest at the rate equivalent to the prevailing LIBOR or the prevailing commercial rate, whichever is lower, from the date of the expropriation until payment.

4. The legality of the expropriation and the amount of compensation determined may be reviewed by an ordinary judicial procedure of the Contracting Party that took the expropriation measure.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party have suffered damages or losses resulting from war or any other armed conflict, revolution, state of national emergency, riot, insurrection or other similar events shall be granted by the latter Contracting Party, as regards restitution, compensation, remuneration or any other remedy, treatment no less favourable than that accorded by the latter Contracting Party to its own investors or to investors of any third State, and the most favourable treatment shall be taken into account.

2. Without prejudice to the provisions of paragraph 1 of this Article, an investor of one of the Contracting Parties who, in any of the events referred to in that paragraph, has suffered a loss on the territory of the other Contracting Party resulting from:

a. Requisitioning their investments or part thereof by the forces or authorities of the other Contracting Party, or

b. The destruction of their investments or part thereof by the forces or authorities of the other Contracting Party. Which was not caused in combat action or was not required by the necessity of the situation.

3. Shall be returned thereof or accorded appropriate compensation.

Article 6. Transfer of Payments Related to Investments

1. Each Contracting Party, in whose territory investments are made by investors of the other Contracting Party, shall guarantee to these investors, after they have fulfilled their fiscal obligations, the freedom to transfer, in a convertible currency and without undue delay, the amounts relating to their investments, in particular:

- a. The original capital or additional amounts intended to maintain or grow the investment;
- b. Profits, dividends, interest, royalties, and other returns;
- c. Amounts required to repay investment-related loans;
- d. Proceeds of total or partial sale or liquidation of an investment;
- e. Compensations due pursuant to Articles 4 and 5;
- f. Earnings of nationals employed from abroad in connection with the investment;
- g. Amounts arising out of the settlement of disputes, according to Article 10.

2. The transfers referred to in paragraph 1 above shall be made at the exchange rate applicable on the date of transfer and in accordance with the exchange regulations in force in the territory of the Contracting Party in which the investment was made.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may, in good faith and in a fair and non-discriminatory manner, measures that delay or prevent a transfer to ensure compliance by investors with the national legislation of the host Contracting Party and relating to:

- a. Payment of fees and dues;
- b. Bankruptcy, insolvency or other legal proceedings to protect the rights of creditors;
- c. Criminal or administrative offenses;
- d. Ensuring compliance with orders or rulings relating to judicial procedures.

4. Either Contracting Party may, on a non-discriminatory basis, adopt or maintain measures relating to the free transfer of capital and payment transactions:

- a. In the event in which the Contracting Party's balance sheet is facing serious financial difficulties and external financial difficulties or is threatened with facing them; or
- b. In cases where, in exceptional circumstances, capital movements cause or threaten to cause serious problems for macroeconomic management, particularly with regard to monetary and exchange rate policies.

5. The procedures referred to in paragraph 4 of this Article shall:

- a. Not to exceed what is necessary to deal with the circumstances set out in paragraph 4 of this Article;
- b. To be applied within a limited period of time and to be eliminated as soon as conditions permit;
- c. To be promptly notified to the other Contracting Party.

6. The guarantees provided for in this Article shall be at least equivalent to those granted to investors of the most favoured nation in similar situations.

Article 7. Precautionary Measures

1. Nothing in this Agreement shall be interpreted as preventing a Contracting Party from adopting or maintaining reasonable measures for precautionary reasons, particularly aimed at ensuring:

- a. The protection of investors, depositors, participants in financial markets, insurance policyholders, and claimants of compensation;
- b. The preservation of the safety, solvency, soundness, and financial responsibility of financial institutions;
- c. The maintenance of the stability and soundness of the financial system of a Contracting Party.

2. This Agreement does not apply to general measures adopted by public authorities for purposes falling within the framework of monetary, credit, and exchange rate policies.

Article 8. Subrogation

1. If a Contracting Party or an agency authorized by it (hereinafter referred to as the “insurer”) makes payments to its investors under a guarantee or insurance contract against non-commercial risks for an investment made in the territory of the other Contracting Party, the latter Contracting Party acknowledges that the insurer is subrogated to the investor in all rights and claims arising from such investments, and acknowledges that the insurer is entitled to exercise those rights and make those claims to the same extent as the original investor;
2. The insurer is permitted to substitute the investor as the direct beneficiary of any amount paid as compensation or other consideration to which the investor is entitled;
3. Any dispute between one Contracting Party and the Insurer of an investment of the other Contracting Party shall be settled in accordance with the provisions of Article 10 of this Agreement.

Article 9. Application of other Rules

1. If the laws of either Contracting Party or any obligations under international law currently in force or subsequently established between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, which grant to investments of investors of the other Contracting Party more favourable treatment than is provided for in this Agreement, such rules shall prevail insofar as they are more favourable to the investor than in this Agreement;

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute arising between a Contracting Party and an investor of the other Contracting Party in relation to an investment in the territory of the first Contracting Party concerning an obligation under this Agreement shall, to the extent possible, be settled amicably;
2. If such disputes are not settled within six months from the date on which one party to the dispute requests an amicable settlement through a written notice to the other party, the dispute shall be submitted for settlement upon the choice of the aggrieved party to:
 - a. The legally competent courts of the contracting party on whose territory the investment was made.
 - b. International arbitration in accordance with the following paragraphs of this Article.Where the investor concerned chooses to submit the dispute to the legally competent courts of the Contracting Party on whose territory the investment was made or to international arbitration as provided, this choice shall be final and irrevocable for the investor.
3. In the event that the aggrieved party chooses to submit the dispute to an international arbitration decision, this party must first give its written consent to submit the dispute to one of the following bodies:
 - a. The International Centre for Settlement of Investment Disputes (the Centre) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965 (the Washington Convention), provided that both Contracting Parties are parties to the Washington Convention and the Washington Convention is applicable to the dispute;
 - b. As long as this condition is not met, each Contracting Party agrees that the dispute shall be settled under the Additional Facility Rules and Regulations by the General Secretariat of the Centre;
 - c. An arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
 - d. An international arbitrator or an ad-hoc arbitration court to be established by agreement between the parties to the dispute.
4. If no agreement is reached on one of the alternative procedures referred to in paragraph (2), after the expiry of a period of three months from the date of written notification of the investor's decision to refer the dispute to international

arbitration, the dispute shall be resolved, upon a written request from the investor concerned, on the terms of the procedure mutually agreed upon between the two parties.

5. The decision to resolve the dispute shall be taken on the basis of national law of the Contracting Party, which is a party to the dispute, in whose territory the investment is made, including the rules of conflict of laws, the provisions of this Agreement and the principles of international law.

6. The award issued by the arbitrator concerned with the provisions of paragraphs (3) or (4) shall be final and binding on the two parties to the dispute.

7. Each Contracting Party shall enforce the award in accordance with its national laws.

Article 11. Settlement of Disputes between the Contracting Parties

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

Otherwise, the dispute shall be submitted to a special joint committee composed of representatives of the two parties, which shall meet without delay at the request of one of the contracting parties,

2. If the dispute is not settled within six months from 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 tribunal for arbitration in accordance with the following provisions:

a. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State to be appointed as Chairman of the tribunal. The two arbitrators shall be appointed within two months, and the Chairman within four months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

b. If within the periods fixed in paragraph 2 (a) above have not been respected, either Contracting Party shall invite the International Court of Justice to make the necessary appointments.

If the necessary appointments have not been made within the time limits specified in paragraph 2 of this Article, either Contracting Parties shall invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is prevented to exercise this function by any impediment, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or is prevented from exercising this functions by any impediment, the most senior member of the International Court of Justice who is not a national of one of the Contracting Parties shall be invited to make the appointments.

3. The arbitral tribunal shall determine its own procedures, and the arbitral tribunal shall take its decision on the basis of the provisions of this agreement as well as international law. The arbitral tribunal shall take decisions by a majority of votes.

The tribunal's decisions shall be final and binding on both contracting parties.

4. Each contracting party shall bear the expenses of its arbitrator in the arbitration procedure, while the expenses of the president and the remaining expenses shall be divided equally between the two contracting parties.

5. Each Contracting Party shall undertake to implement this decision in accordance with its laws and regulations.

Article 12. Consultations

Each of the Contracting Parties shall immediately accept, at the request of either of them, to hold consultations on the interpretation or application of this Agreement.

Article 13. Application

This Agreement shall apply to all investments made before and after its entry into force by investors of one of the Contracting Parties on the territory of the other Contracting Party in accordance with the laws and regulations of the latter. However, this Agreement shall not apply to disputes that may arise before its entry into force.

Article 14. Amendments

1. The Contracting Parties may, if necessary, by a written agreement, add, replace, cancel or change all or any of the provisions of this Agreement.

2. The amendment to the Agreement shall enter into force in accordance with the procedures required for the entry into force of this Agreement as set out in Article 15.

Article 15. Entry Into Force, Duration, and Termination

1. This Agreement shall be submitted for ratification and shall enter into force thirty (30) days from the date of receipt of the last notification confirming that both Contracting Parties have completed their respective constitutional procedures.

This Agreement shall remain into force for a period of ten (10) years, unless one of the contracting parties expresses its desire to terminate it, within a period of at least six (6) months before the end of its duration period, and it shall be automatically renewed for another period of ten (10) years, with each contracting party retaining the right to terminate it by a written notice notified at least six (06) months before the expiration date of its duration period.

2. In respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall remain in effect for a period of ten (10) years from the date of the termination.

This Agreement was signed in Lusaka on February 20, 2017, in two original copies in both Arabic and English, both texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Kingdom of Morocco:

Mohamed Boussaid

Minister of Economy and Finance

For the Government of the Republic of Zambia:

Margaret Mwanakatwe

Minister of Commerce, Trade, and Industry