

Agreement

between

the Swiss Confederation

and

the Republic of Zimbabwe

on the Promotion and Reciprocal Protection

of Investments



Preamble

The Swiss Federal Council and the Government of the Republic of Zimbabwe,

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:

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Article 1

Definitions

For the purpose of this Agreement:

- (1) The term "investor" refers with regard to either Contracting Party to
 - (a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
 - (b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat in the territory of the same Contracting Party;
 - (c) legal entities not established under the law of that Contracting Party but effectively controlled by natural persons as defined in (a) above or by legal entities as defined in (b) above.
- (2) The term "investments" shall include every kind of assets and particularly:
 - (a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;
 - (b) shares, parts or any other kinds of participation in companies;
 - (c) claims to money or to any performance having an economic value;
 - (d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
 - (e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

A change in the form in which assets are invested does not affect their character as investments.

- (3) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.
- (4) The term "territory" means the territory of each Contracting Party over which that State may exercise sovereign rights or jurisdiction according to international law.
- (5) The term "law" includes laws as well as published administrative rules and regulations.

Article 2

Scope of application

This Agreement shall apply to all investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party which have been or are made in accordance with the laws of the latter Contracting Party.

Article 3

Promotion, admission

-) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws.
-) Each Contracting Party shall grant, in accordance with its laws, the necessary permits in connection with such investments, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorisations required for the activities of consultants or experts.

Article 4

Protection, treatment

Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of investments in its territory of investors of the other Contracting Party.

Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

Each Contracting Party shall in its territory accord investors of the other Contracting Party treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organisation or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5

Free transfer

Contracting Party in whose territory investments have been made by investors of the Contracting Party shall grant those investors the free transfer of the payments relating to investments, particularly of:

- (a) returns;
- (b) repayments of loans;
- (c) amounts assigned to cover expenses relating to the management of the investment;
- (d) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;
- (e) additional contributions of capital necessary for the maintenance or development of the investment;
- (f) the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values.

Article 6

Expropriation

- (1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realisable and be freely transferable. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt 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 paragraph.
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- (2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares, it shall, to the extent necessary and subject to its laws, ensure that compensation according to paragraph (1) of this Article will be made available to such investors.

Article 7

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, revolution, 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 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 investors of any other State whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.
-) 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 their property by its forces or authorities, or
 - (b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 8

Other obligations

- (1) If provisions in the laws of either Contracting Party or in international agreements entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 9

Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non commercial risks in 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 by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 10

**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 Article 11 of this Agreement (Disputes between Contracting Parties), consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within six months and if the investor concerned gives written consent, the dispute shall be submitted to the arbitration of the International Centre for Settlement of Investment Disputes,

instituted by the Convention of Washington of March 18, 1965, for the settlement of disputes regarding investments between States and nationals of other States.

Each party may start the procedure by addressing a request to that effect to the Secretary-General of the Centre as foreseen by Article 28 and 36 of the above-mentioned Convention. Should the parties disagree on whether conciliation or arbitration is the most appropriate procedure, the investor concerned shall have the final decision.

- (3) The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the Contracting Parties; the terms of any particular agreement that has been concluded with respect to the investment; the law of the Contracting State party to the dispute, including its rules on the conflict of laws; such rules of international law as may be applicable.
- (4) The Contracting Party which is a party to the dispute shall not at any time during the procedures assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.
- (5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to the arbitration of the Centre unless the other Contracting Party does not abide by and comply with the award rendered by the arbitral tribunal.
- (6) The arbitral award shall be final and binding for the parties involved in the dispute and shall be enforceable in accordance with the laws of the Contracting Party in which the investment in question is located.

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Article 11

Disputes between Contracting Parties

- (1) Where a dispute arises concerning this Agreement, the Parties agree to consult and negotiate on any matter related to its interpretation or application. The Parties shall accord the necessary consideration and opportunity for such consultations and negotiations.
- (2) In the event that the consultations and negotiations fail to resolve the dispute within a period of six months from the date of request for consultations and negotiations, either of the Parties may, unless they have otherwise agreed, submit the dispute to an arbitral tribunal composed of three members. Each Party shall appoint one arbitrator. The third arbitrator, who will be the Chairman of the arbitral tribunal and a national of a third State, shall be appointed by agreement of the other two arbitrators. If any of the arbitrators are unable to perform the duties, a substituting arbitrator shall be appointed as provided for in this Article.
- (3) Should one of the Parties fail to appoint its arbitrator within two months after the other Party has submitted the dispute to arbitration and has appointed its arbitrator, the latter Party may request the President of the International Court of Justice to make the corresponding appointment. If the latter is prevented from making such appointment or is a national of either Party, the Vice President or the most senior member of the Court shall make such an appointment.
- (4) In the event that the two arbitrators appointed by the Parties are unable to reach an agreement concerning the third arbitrator within two months after their appointment, either Party may request the President of the International Court of Justice to make the corresponding appointment. If the latter is prevented from making such an appointment or is a national of either Party, the Vice President or the most senior member of the Court shall make such an appointment.
- (5) The tribunal shall determine its own procedures, unless the Parties agree otherwise. The tribunal shall decide the dispute according to this Agreement and to other relevant agreements between the Parties and to the other rules of international law and shall take into account, as may be appropriate, relevant domestic

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laws. The tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding for both Parties.

- (6) Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties.

Article 12

Final provisions

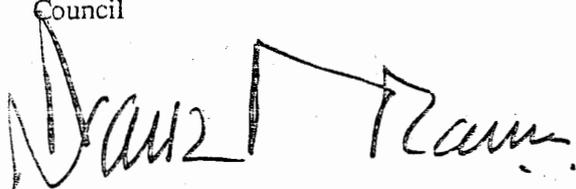
- (1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

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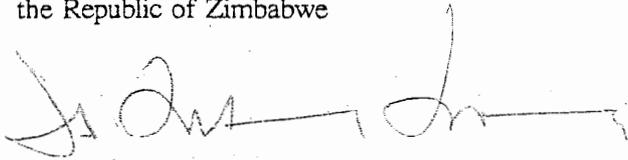
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Done at Harare, on 15 August 1996, in
the English and French languages, each text being equally authentic.

For the Swiss Federal
Council



For the Government of
the Republic of Zimbabwe



Protocol

On signing the Agreement between the Swiss Confederation and the Republic of Zimbabwe on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have agreed on the following clarifications, which shall be regarded as an integral part of the said Agreement.

Ad Article 5

Notwithstanding the provision of paragraph (1), letter (f) of this Article, in respect of the Republic of Zimbabwe, the transfer of the proceeds of the sale or liquidation of investments admitted prior to 1 May 1993 shall be subject to the conditions for such transfer which existed at the time of admission of the investment. The Government of the Republic of Zimbabwe shall use its best endeavors to reduce any restrictions on these payments and shall guarantee the unrestricted transfer for all payments mentioned in paragraph (1) of this Article not later than on 1 January 1999.

Done at Harare, on 15 August 1996, in the English and French languages, each text being equally authentic.

For the Swiss Federal
Council

For the Government of
the Republic of Zimbabwe

