

3. The Insuring Agency shall assert no greater rights than those of the transferring investor under the laws of the Republic of Malawi with respect to any interest transferred or succeeded to as contemplated in paragraph 1. The Government of Canada does, however, reserve its right to assert a claim in its sovereign capacity in the event of a denial of justice or other question of state responsibility as defined in international law.

4. Should the said Insuring Agency acquire, under investment insurance contracts, amounts and credits of the lawful currency of the Government of the Republic of Malawi, the said Government of the Republic of Malawi shall accord to those funds treatment no different than that which it would accord if such funds were to remain with the investor, and such funds shall be freely available to the Government of Canada to meet its expenditures in the national territory of the Republic of Malawi.

5. This Agreement shall apply only with respect to insured investments in projects or activities which are permitted by the Government of the Republic of Malawi.

6. Differences between the two Governments concerning the interpretation and application of provisions of this Agreement or any claim arising out of investments insured in accordance with this Agreement, against either of the two Governments, which in the opinion of the other presents a question of public international law, shall be settled, insofar as possible, through negotiations between the Governments. If such differences cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Government, to an ad hoc tribunal for settlement in accordance with applicable principles and rules of public international law. The arbitral tribunal shall consist of three members and shall be established as follows: each Government shall appoint one arbitrator; a third member, who shall act as Chairman, shall be appointed by the other two members. The Chairman shall not be a national of either country. The arbitrators shall be appointed within two months and the Chairman within three months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments and both Governments agree to accept such appointment or appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either country the appointment or appointments shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either country, the appointment or appointments shall be made by the next senior judge of this Court who is not a national of either country. The arbitral tribunal shall decide by a majority vote. Its decision shall be final and binding on both Governments. Each of the Governments shall pay the expense of its members and its representation in the proceedings before the arbitral tribunal; expenses of the Chairman and other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt other regulations concerning costs. In all other matters, the arbitral tribunal shall regulate its own