

# Agreement between the Swiss Confederation and the Syrian Arab Republic concerning the reciprocal promotion and protection of investments

The Swiss Federal Council

And

The Government of the Syrian Arab Republic,

Desiring to intensify economic cooperation in the mutual interest of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party,

Recognizing the need to promote and protect foreign investment in order to stimulate the flow of capital and technology, thus promoting economic prosperity of both States;

Convinced that these objectives can be achieved without reducing the standards of general application relating to health, safety and environment;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means all categories of assets and related rights according to the applicable law, and shall include in particular, though not exclusively:

(a) the ownership of movable and immovable property, as well as all other rights in rem, such as easements, land charges, pledges on movable and immovable property, usufruct;

(b) shares and other forms of participation in companies;

(c) monetary claims and rights to any service having economic value;

(d) copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin, know-how and goodwill;

(e) the concessions under public law, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the authority in accordance with the law.

(2) The term "investor" means, with respect to each Contracting Party,

(a) natural persons who, in accordance with the law of that Contracting Party, are deemed to be its nationals;

(b) legal entities, including corporations, registered companies, partnerships or other organisations, which are incorporated or organised in any other manner in accordance with the law of that Party; or and who have actual economic activities in the territory of the same Contracting Party.

(3) The term "income" means amounts derived from an investment and includes in particular, but not exclusively, profits, interest, capital gains, dividends, royalties and remunerations.

(4) The term "territory" means:

- in respect of the Syrian Arab Republic: the term "country" means, in accordance with international law, the territories of the Syrian Arab Republic, including its internal waters, territorial sea and its subsoil thereof and the airspace above them to which Syria has sovereign rights and other maritime areas to which Syria may exercise sovereign rights for the purpose of exploitation and exploration for and preservation of natural resources.

- in respect of the Swiss Confederation, the territory of Switzerland as defined in its laws, in accordance with the International Law.

## **Article 2. Scope**

This Agreement shall apply to investments made in the territory of a Contracting Party which are owned or controlled directly or indirectly by investors of the other Contracting Party. It shall apply to such investments made prior to or after its entry into force, but shall not apply to disputes arising out of events which occurred prior to that date.

## **Article 3. Encouragement , Admission**

(1) Each Contracting Party shall promote as far as possible investments by investors of the other Contracting Party in its territory, including through the exchange of information between the Contracting Parties on investment opportunities, and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations, all licenses or permits in connection with such investments, including those required for the performance of contracts, technical assistance, commercial or administrative and managerial and specialists chosen by the investor.

(3) Each Contracting Party shall publish or otherwise make publicly available without delay, its laws, regulations, procedures and administrative rulings of general application as well as international agreements which may affect the investments of investors of the other contracting party.

## **Article 4. Protection and General Treatment**

Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party fair and equitable treatment and full and constant protection and security. No Contracting Party shall in any way interfere with the operation, management, maintenance, use, enjoyment, expansion or disposal of such investments by unjustified or discriminatory measures.

## **Article 5. National Treatment and Most-favoured-nation Treatment**

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

(2) Each Contracting Party shall accord to investors of the other Contracting Party, with respect to the operation, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever treatment is more favourable to the investor concerned.

(3) If a Contracting Party grants special advantages to investors of any third State under an agreement establishing a free trade area, a customs union or a common market, or under an agreement for the avoidance of double taxation, it shall not be obliged to grant such advantages to investors of the other Contracting Party.

## **Article 6. Free Transfer**

(1) Each Contracting Party shall accord to investors of the other Contracting Party the transfer without restriction or delay in a freely convertible currency, amounts relating to their investments and in particular, though not exclusively:

(a) Income;

(b) The amounts relating to contractual obligations, including loan agreements;

(c) The amounts to be used to cover expenses relating to the management of the investment;

(d) Royalties and other payments deriving from rights enumerated in article 1, paragraph (1), letters (c), (d) and (e) of this Agreement;

(e) The initial capital and additional amounts needed for the maintenance of the development or investment;

(f) Proceeds from the sale or the total or partial liquidation of the investment, including possible gains;

(g) Payments arising under articles 7 and 8 of this Agreement.

(2) Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment has been made.

## **Article 7. Expropriation and Compensation**

(1) Neither Contracting Party shall, directly or indirectly, take measures of expropriation, nationalisation or any other measure having the same character or effect, against investments of investors of the other Contracting Party, except for reasons of public interest and provided that such measures are non-discriminatory, comply with the guarantees provided for by law and give rise to the payment of prompt, effective and adequate compensation. The compensation shall amount to the market value of the expropriated investment immediately before the expropriation decision is communicated or made public, whichever is the earlier. The amount of compensation shall be paid in a freely convertible currency and shall be paid without delay.

(2) The investor affected by the expropriation shall have the right under the law of the Party to expropriating contracting authority, to have a prompt review by an expropriating contracting authority of the or other authority independent of that Contracting Party, of its case and the valuation of its investment in accordance with the principles set out in this article.

(3) If a Contracting Party expropriates the assets of a registered company or incorporated in accordance with the legislation in force in any part of its territory, and in which investors of the other Contracting Party possess of the units, it will, to the extent necessary and in accordance with its legislation, guarantee that the compensation in accordance with paragraphs (1) and (2) of this section be paid to these investors.

## **Article 8. Compensation for Losses**

Investors of a Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of emergency, rebellion, civil disturbance or other similar events occurring in the territory of the other Contracting Party shall be accorded treatment by the latter in accordance with Article 5 of this Agreement with respect to restitution, compensation, indemnification or any other settlement.

## **Article 9. Other Commitments**

(1) If the provisions of the legislation of a Contracting Party or the obligations of international law, present or future, general or special, accord to the investments of investors of the other Contracting Party a more favourable treatment than that accorded to investors of the other Contracting Party the one provided for in this Agreement, they shall prevail over this Agreement. for the duration of their existence, to the extent that they are more favourable.

(2) Each Contracting Party shall comply with any other obligation to which it is subject. has subscribed in respect of a specific investment of an investor of the other Party; and contractor.

## **Article 10. Principle of Subrogation**

If a Contracting Party or its designated agency has made a payment under a financial guarantee against non-commercial risks with 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 on the basis of the principle of subrogation to the rights of the investor.

## **Article 11. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) In order to find a solution to investment disputes between a Contracting Party and an investor of the other Contracting Party, and without prejudice to Article 12 of this Agreement (Disputes between Contracting Parties), consultations shall be held between the parties concerned.

(2) If these consultations do not resolve the dispute within six months of the written request to enter into them, the investor may submit the dispute either to the judicial or administrative courts or tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter case, the investor shall have the choice between:

(a) the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965 (hereinafter referred to as the "Washington Convention"), provided that both Contracting Parties are members of the Convention, and

(b) an ad hoc arbitral tribunal which, unless the parties to the dispute so agree otherwise, shall be constituted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Both Contracting Parties declare their consent to the submission of such a dispute to arbitration in accordance with this paragraph.

(3) A corporation that has been registered or incorporated in accordance with the laws in force in the territory of a Contracting Party and which, before a dispute has arisen, was controlled by investors from the other Contracting Party, will be considered, within the meaning of Art. 25 (2) let. (b) of the Washington Convention, as a company of the other Contracting Party.

(4) The Contracting Party that is a party to the dispute shall not, at any time, be permitted to the proceedings, to plead immunity or that the investor has received, under the terms of the an insurance contract, an indemnity covering all or part of the damage suffered.

(5) No Contracting Party shall pursue through diplomatic channels any dispute submitted to international arbitration, unless the other Contracting Party has agreed to submit to international not in accordance with the arbitral award.

(6) The arbitral award shall be final and binding on the parties to the dispute; it shall be enforced without delay in accordance with the law of the Contracting Party. concerned.

## **Article 12. Disputes between the Contracting Parties**

(1) Disputes between the Contracting Parties relating to the interpretation or application of the provisions of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If the two Contracting Parties do not reach a settlement within six months of the date of the months after the dispute has arisen, the dispute shall be submitted, at the request of either Contracting Party, to a three-member arbitral tribunal. Each Contracting Party shall appoint one arbitrator. The two arbitrators so appointed shall will appoint a chairman, who will be a national of a third State.

(3) If one of the Contracting Parties has failed to appoint its arbitrator and has not given following an invitation by the other Contracting Party to proceed in both months of such appointment, the arbitrator shall be appointed, at the request of the latter Party by the President of the International Court of Justice.

(4) If the two arbitrators are unable to agree on the choice of the chairman within a period of three months, the Chairman shall be appointed by the President of the International Court of Justice. within two months of their appointment, the latter shall be appointed, at the request of either or the other Contracting Party, by the President of the International Court of Justice.

(5) If, in the cases referred to in sub-paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from holding office or if he is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President and, if the latter is prevented from holding office or if he is a national of one of the Contracting Parties, they shall be made by the most senior member of the Court who is not a national of any of the Contracting Parties.

(6) Unless the Contracting Parties provide otherwise, the Tribunal shall determine its own rules of procedure. Each Contracting Party shall bear the expenses of its own member of the Tribunal and of his representation in the arbitral proceedings. The expenses of the Chairman and the remaining costs shall be borne equally by the Contracting Parties, unless the arbitral tribunal decides otherwise.

(7) The decisions of the Tribunal shall be final and binding for each Contracting Party.

## **Article 13. Final Provisions**

(1) The present Agreement shall enter into force on the day on which the two Governments have notified each other that the legal formalities required for the entry into force of international agreements have been completed; it shall remain in force for a period of ten years. If it is not denounced in writing with six months' notice before the expiry of that period, it shall be considered renewed under the same conditions for a period of two years, and so on.

(2) In the event of denunciation, the provisions of Articles 1 to 12 of this Agreement shall continue to apply for a further period of ten years to investments made before its expiry.

(3) This Agreement replaces the Agreement between the Swiss Confederation and the Syrian Arab Republic concerning the Reciprocal Encouragement and Protection of Investments, signed at Berne on 22 June 1977, which entered into force on 10 August 1978.

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

Done at Damascus, on 9 May 2007, each in two originals in English, Arabic and English languages, all texts being equally authentic. In the event of any inconsistency, the English text shall prevail.

For the Swiss Federal Council:

Jean-Daniel Gerber

For the Government of the Syrian Arab Republic:

Amer Hosni Lutfi