Agreement between the Swiss Confederation and the Kingdom of Saudi Arabia on the Encouragment and Reciprocal Protection of Investments

The Government of the Swiss Confederation and the Government of the Kingdom of Saudi Arabia (hereinafter referred to as the "Contracting Parties"),

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, and thus to encourage new business initiatives,

RECOGNIZING the need to promote and protect investments with the aim to foster economic prosperity in both States,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" refers to any kind of asset and any rights connected thereto pursuant to applicable law, and includes in particular, though not exclusively:

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

(b) shares, stocks and debentures of companies and any other rights or interests in companies as well as public securities issued by a Contracting Party or any of its entities;

(c) claims to money such as loans or to any performance having an economic value associated with an investment;

(d) intellectual property rights including but not limited to copyrights, patents, industrial designs, know-how, trade marks, trade and business secrets, trade names and good-will;

(e) any right conferred by law or under public contract or any licenses, permits or concessions issued according to the law.

Any alteration of the fonn in which assets are invested or reinvested shall not affect their character as investments.

2. The term "returns" means the amounts yielded by an investment and includes in particular but not exclusively profits, dividends, capital gains, royalties, fees, or any similar payments.

3. The term "investor" means:

(a) in respect of the Kingdom of Saudi Arabia:

(i) natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

(ii) any entity, with or without legal personality, constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in the territory thereof, such as corporations, enterprises, cooperatives, companies, partnerships, establishments, funds, organizations, business associations and similar entities, irrespective of whether or not they are of limited liability;

(iii) the Government of the Kingdom of Saudi Arabia and its financial institutions, such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions;

(b) in respect of the Swiss Confederation:

(i) natural persons who, according to Swiss law, are its nationals;

(ii) legal entities constituted under Swiss law and having their seat on Swiss territory.

4. The term "territory" means the territory of each Contracting Party, including the areas of the exclusive economic zone insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas

Article 2. Application

This Agreement shall apply to investments in the territory of one Contracting Party that are owned or controlled by investors of the other Contracting Party. It applies to any such investments, whether made prior to or after its entry into force, but not to disputes relating to events occurring before that date.

Article 3. Promotion, Protection

1. Each Contracting Party shall in its tenitory promote as far as possible investments by investors of the other Contracting Party. It shall admit such investments in accordance with its laws and regulations and shall facilitate the granting of all necessary permits in connection with any such investment and the activities with which it is associated.

2. Investments and returns of investors of each Contracting Party shall enjoy full protection and security in the tenitory of the other Contracting Party.

3. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.

Article 4. Treatment

1. Each Contracting Party shall accord investments and returns of investors of the other Contracting Party fair and equitable treatment. In no case shall such treatment be less favourable than that accorded to investments and returns of investors of any third State.

2. Once admitted in accordance with its laws and regulations, each Contracting Party shall grant investments and returns of investors of the other Contracting Party treatment not less favourable than that accorded to investments and returns of its own investors.

3. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments as well as any other activity associated with them, treatment not less favourable than the treatment it accords to its own investors or to investors of any third State, whichever is more favourable.

4. 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 or a common market 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.

5. Nothing in this Article shall oblige a Contracting Party to accord investors or investments of investors of the other Contracting Party any privileges in matters of taxation that it may accord to its own domestic investors or their investments

Article 5. Expropriation, Compensation

1. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party, unless such measures are taken for the public benefit, against prompt, adequate and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application. The compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. It shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return until the time of payment; it shall be effectively realizable and freely transferable. Provision for the determination and payment of such compensation shall have been made in an appropriate manner at or prior to the time of the

expropriation, nationalization or comparable measure. The legality of any such measure and the amount of compensation shall be subject to review under due process of law.

2. Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, state of emergency or revolt shall be accorded by the latter Contracting Party treatment not less favourable than that which it accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Resulting payments shall be freely transferable.

Article 6. Free Transfer

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular of:

(a) the principal and additional amounts to maintain or increase the investment;

(b) returns;

(c) payments relating to loans incurred or other contractual obligations undertaken for the investment;

(d) the proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(f) payments incurred from expropriation, nationalization or from any similar measures as mentioned in Article 5 of this Agreement.

Article 7. Exchange Rate

Transfers under Articles 5 and 6 of this Agreement shall be made without delay at the prevailing rate of exchange. In the absence of a market rate of exchange, the rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

Article 8. Principle of Subrogation

Where one Contracting Party has granted any guarantee against non-commercial risks in regard to an investment by one of its inves~ors 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 9. Other Commitments

1. Legal provisions of a Contracting Party or its international obligations that entitle investments of investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement shall prevail over the respective provisions of this Agreement.

2. Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory of investors of the other Contracting Party.

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

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party should be amicably settled as far as possible.

2. If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six months from the date when the request for the settlement has been submitted, it shall be filed, at the request of the investor, with the competent court of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on 18 March 1965.

3. If the dispute has been filed with the competent court of the Contracting Party in accordance with paragraph (2) of this

Article, the investor may not submit this dispute to international arbitration as referred to in the same paragraph. The judgment of the court shall be binding and subject to all applicable procedures for enforcing judgments according to the domestic law of the Contracting Party concerned.

4. The arbitral award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

Article 11. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If the dispute between the Contracting Parties cannot be settled within a period of six months from the date on which the issue was raise~ in writing by one of the Contracting Parties, it shall upon request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then within two months select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The approval by the Contracting Parties shall not take more than one month.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, 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 is otherwise prevented from discharging the said function, the member of the International Court of Justice 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 determine its own procedures, unless the Contracting Parties agree otherwise. It shall reach its decisions by a majority of votes. The decisions by the tribunal shall be final and binding upon both Contracting Parties.

6. Each Contracting 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 both Contracting Parties.

Article 12. Final Provisions

1. This Agreement shall enter into force thirty days after the date on which both Contracting Parties have notified each other in writing through diplomatic channels that their legal requirements for its entry into force have been fulfilled.

2. It shall be in force for an initial period of ten years. Unless written notice of termination is given twelve months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for successive periods of five years.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.

Done at Riyadh on 1 April 2006, corresponding to 3 Rabiul I 1427 H in duplicate in the Arabic, French and English languages, all texts being equally authentic. In case of divergences the English text shall prevail.

For the Government of the Swiss Confederation:

Joseph Deiss

Federal Councillor

For the Government of the Kingdom of Saudi Arabia:

H.E. Amr A. Al-Dabbagh