

Agreement between the Swiss Confederation and the Kingdom of Saudi Arabia on the Promotion 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 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, with a view to supporting new initiatives,

Recognizing the need to promote and protect investment with a view to promoting economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means:

- (a) all categories of assets and fee according to the applicable law, and shall include in particular, though not exclusively: ownership of movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and similar rights, usufruits;
- (b) securities, shares and debentures of companies, and any other rights or interests in companies, as well as the government debt securities issued by a contracting party or one of its entities;
- (c) Monetary claims, such as loans, and rights to any performance having economic value associated with an investment;
- (d) intellectual property rights, including but not limited to patents, copyrights, industrial designs, trademarks, trade secrets, know-how and business, trade names and goodwill;
- (e) any right conferred by law or under any contract and permits and licences or concessions granted in accordance with the law.

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

(2) The term means the returns derived from an investment amounts and in particular, though not exclusively, capital gains, profits, dividends, royalties, fees and other similar payments.

(3) The term investor means:

(a) with respect to the Kingdom of Saudi Arabia:

- (i) natural persons having the nationality of the Kingdom of Saudi Arabia in accordance with the legislation of the Kingdom of Saudi Arabia;
- (ii) any entity with or without legal personality, incorporated under the laws of the Kingdom of Saudi Arabia and having its registered office in the territory of the latter, such as capital companies, corporations, cooperatives, companies, corporations of individuals, institutions, funds, organizations, business associations or similar entities that their responsibility is limited or not;
- (c) the Government of the Kingdom of Saudi Arabia and its financial institutions such as the Saudi Arabian Monetary Agency (Saudi Arabian Monetary Agency), public funds and other similar governmental institutions;

(b) as regards the Swiss Confederation:

(i) natural persons who according to the laws of Switzerland, are its nationals;

(ii) legal entities which are incorporated under Swiss law and have their principal place of business in the Territory of Switzerland.

(4) The term territory means the territory of either Contracting Party, including the exclusive economic zone and to the extent the International Law Contracting Party concerned to exercise sovereign rights or jurisdiction.

Article 2. Applicability

This Agreement shall apply to investments made in the territory of a contracting party which are owned or controlled 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. Promotion and Protection

(1) Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory. It shall admit such investments in accordance with its laws and regulations, and facilitate the issuance of all the necessary permits in connection with such investments and activities associated with them.

(2) Returns of investments and investors of each Contracting Party shall enjoy protection and security in the territory of the other contracting party.

(3) No Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increased or disposal of such investments.

Article 4. Treatment

(1) Each Contracting Party shall accord to returns of investments and investors of the other contracting party fair and equitable treatment. This treatment shall in no case be less favourable than that which it accords to returns of investments and investors of any third State.

(2) Once admitted in accordance with its laws and regulations, each Contracting Party shall accord to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own returns of investments and investors.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, as well as any other activity intolerance, treatment no less favourable than that it accords to its own investors or of any third State, the most favourable treatment is crucial.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union or common market or by virtue of an agreement for 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 extend to investors of the other Contracting Party and the tax advantages to their investments which it may be accorded to its own their investments or investors.

Article 5. Expropriation and Compensation

(1) Investments of investors of one Contracting Party shall not be expropriated or nationalized, subject to any other measure having effect equivalent to expropriation or nationalisation by the other contracting party except for reasons of public interest and provided that such measures are subject to the payment of prompt, effective and adequate compensation, they are not discriminatory and are in accordance with the national laws of general application. The compensation would be equivalent to the market value of the expropriated investment immediately before the measure of expropriation, nationalization or equivalent, or threat thereof, is known to the public. It shall be paid without delay and shall include an interest rate of return on the basis of the prevailing rate of return on the market until the date of payment shall be realizable and effectively and freely transferable. The provisions for the purpose of fixing and the payment of compensation has been taken in an appropriate manner at the date of expropriation, nationalization or equivalent, or before it. The legality of the measure and the amount of compensation shall be subject to review in accordance with due process of law.

(2) Investors of one Contracting Party whose investments in the territory of the other contracting party have suffered losses due to a war or any other armed conflict, state of emergency or rebellion, benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors, as regards restitution, indemnification, compensation or other valid 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 relating to an investment, in particular:

- (a) The initial capital and additional contributions of capital necessary for the maintenance of the development or investment;
- (b) Income;
- (c) Payments or other obligations relating to loans for investment;
- (d) The proceeds of liquidation or the sale of the total or partial investment;
- (e) Other earnings and remuneration of personnel engaged from abroad in connection with the investment;
- (f) Payments arising out of expropriation, nationalization or any other similar measures referred to in article 5 of this Agreement.

Article 7. Exchange Rate

The transfers referred to in articles 5 and 6 of this Agreement shall be made without delay at the rate of exchange prevailing. in the absence of a market for foreign exchange, the rate of exchange will correspond to the cross prices resulting from the rate to 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

If a Contracting Party has provided any 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 by virtue of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

Article 9. Other Commitments

(1) The provisions of the legislation of a Contracting Party or its international obligations which accord to investments of investors of the other contracting party to more favourable treatment than is provided for by this Agreement shall take precedence over the provisions of the latter.

(2) Each Contracting Party shall observe any obligation assumed by it in respect of investments made in its territory by investors of the other contracting party.

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

(1) The investment disputes between a Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled amicably.

(2) If the dispute cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of filing of the application of regulation, it shall be submitted, at the request of the investor, to the competent court of the Contracting Party in whose territory the investment has been made or to arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (2), opened for signature at Washington on 18 March 1965.

(3) If the dispute has been brought before the competent court of the Contracting Party in accordance with paragraph (2) of this article, the investor shall not submit the dispute to international arbitration referred to in subparagraph (a). the ruling of

the Court shall be binding and implemented in accordance with the procedures applicable in accordance with the national legislation of the Contracting Party concerned.

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

Article 11. Disputes between the Contracting Parties

(1) Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled within six months from the date on which it was raised in writing by either contracting party, it shall be submitted, at the request of either contracting party 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. these two members shall agree within two months a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. the consent of the Contracting Parties shall be given within one month.

(4) If the necessary appointments have not been made within the periods specified in paragraph (3) of this article, either Contracting Party may, in the absence of any other agreement, 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 is prevented from carrying out the said function for another reason, the Vice-President shall be invited to make the necessary appointments. if the Vice-President is a national of either Contracting Party or is prevented from carrying out the said function for another reason, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own rules of procedure. it shall reach its decisions by a majority of votes. the decisions of the Tribunal shall be final and binding on the contracting parties.

(6) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be shared equally by the contracting parties.

Article 12. Final Provisions

(1) This Agreement shall enter into force 30 days after the date on which the contracting parties have notified each other through diplomatic channels that their legal requirements for its entry into force have been completed.

(2) It shall remain valid for an initial period of ten years. if it is not denounced with 12 months notice in writing before the expiry of this period, it shall be considered on the same terms as renewed 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 apply for a further period of fifteen years from such date of termination.

Done at Riyadh on 1 April 2006, corresponding to 3 Rabiul I 1427 H in two originals, each in the Arabic, French and English languages, all texts being equally authentic. in the event of any inconsistency, the English text shall prevail.

For the Government of the Swiss Confederation:

Joseph Deiss

For the Government of the Kingdom of Saudi Arabia:

A. Amr al-Dabbagh