

# Agreement between the Swiss Confederation and the United Republic of Tanzania on the Promotion and Reciprocal Protection of Investments

The Governments of the Swiss Confederation and the United Republic of Tanzania (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic co-operation 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,

Recognising that the promotion and reciprocal protection of such investments are conducive to stimulating business initiatives and thus favour economic prosperity in the two Contracting Parties.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" shall include every kind of asset and in particular:

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

(b) Shares, parts or any other kind 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.

(2) 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, together with real economic activities, 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.

(3) The term "returns" means the amounts yielded by an investment and includes, in particular, profits, interest, capital gains, dividends, royalties and other fees.

(4) The term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

## Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall however not be applicable to claims or disputes arising out of events which occurred prior to its entry into force.

### **Article 3. Promotion and Admission**

(1) 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 and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all the necessary permits in connection with the investment.

(3) Subject to its laws and regulations, each Contracting Party shall grant key personnel needed by an investor of the other Contracting Party in connection with his investment, entry and stay in its territory, regardless of the nationality of such personnel.

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

(1) 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 such investments and returns.

(2) 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.

(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, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

(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) Special incentives granted by the United Republic of Tanzania to its investors within the framework of its development policy in order to stimulate the creation of local industries are considered compatible with this Article provided they do not significantly affect the investments or the activities of Swiss investors.

### **Article 5. Transfers**

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the transfer without restriction or delay in a freely convertible currency of the amounts relating to such investments, in particular of:

(a) Returns;

(b) Payments relating to loans incurred, or other contractual obligations undertaken, for the investment;

(c) Amounts assigned to cover expenses relating to the management of the investment;

(d) Payments deriving from rights enumerated in Article 1, paragraph (1), letter (d) of this Agreement;(d) of this Agreement;

(e) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values.

(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 regulations in force of the Contracting Party in whose territory the investment was made.

(3) A Contracting Party may, except for transfers for the ordinary conduct of business as enumerated in paragraph (1), letters (b), (c) and (d) above, require that tax obligations in relation to an investment be fulfilled before a transfer under this Article takes place. Such requirement shall not be used to defeat the purpose of this Article.(b), (c) and (d) above, require that tax obligations in relation to an investment be fulfilled before a transfer under this Article takes place. Such requirement shall not be used to defeat the purpose of this Article.

## **Article 6. Expropriation and Compensation**

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the following conditions are met:

- (a) The measures are taken in the public interest, on a non-discriminatory basis and under due process of law; and
- (b) Provisions have been made for prompt, effective and adequate compensation.

(2) The compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier, and shall include interest at a normal commercial rate from the date of dispossession until the date of payment. It shall be settled in a freely convertible currency, be paid without delay and be freely transferable.

(3) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

(4) 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 own 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 paragraphs (1) and (2) of this Article will be made available to such investors. paragraphs (1) and (2) of this Article will be made available to such investors.

## **Article 7. Compensation for Losses**

Investors of either Contracting Party who suffer losses with respect to their Investments in the territory of the other Contracting Party due to war or other armed conflict, a State of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State.

## **Article 8. 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 recognise 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. 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 10 of this Agreement (Disputes between the Contracting Parties), consultations will take place between the parties concerned. Article 10 of this Agreement (Disputes between the Contracting Parties), consultations will take place between the parties concerned.

(2) If these consultations do not result in a Solution within six months from the date of the written request for consultations, the investor may submit the dispute either to the courts or the administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event the investor has the choice between either of the following:

(a) The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965 (hereinafter the "ICSID Convention"); or

(b) An ad-hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the Submission of an investment dispute to international arbitration.

(4) A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting

Party and which before a dispute arises was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the "ICSID Convention", be treated as a Company of the other Contracting Party.

(5) The Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(6) Neither Contracting Party shall pursue through diplomatic Channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.

(7) The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Contracting Party concerned.

## **Article 10. Disputes between the Contracting Parties**

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall if possible be settled through diplomatic Channels.

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party. paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure. 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 the Contracting Parties, unless the arbitral tribunal decides otherwise.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

## **Article 11. Other Commitments**

(1) If provisions in the legislation of either Contracting Party or obligations under international law entitle investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions or obligations shall to the extent that they are more favourable prevail over this Agreement.

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

## **Article 12. Entry Into Force, Duration and Termination**

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain in force for a period of ten years. Thereafter, it shall remain in force until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in six months.

(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. Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

(3) This Agreement replaces the "Convention between the Government of the Swiss Confederation and the Government of the United Republic of Tanzania concerning the Encouragement and Reciprocal Protection of Investments", signed in Berne, on May 3rd, 1965, entered into force on September 16th, 1965, entered into force on September 16th, 1965.

Done in duplicate, at Dar es Salaam, on 8th April 2004, in French and English language, each text being equally authentic. In case of divergences the English text shall prevail.

For the Swiss Federal Council

For the Government of the United Republic of Tanzania