

Agreement Between the Government of the United Arab Emirates and the Swiss Federal Council on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the United Arab Emirates, 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,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" shall mean:

a. In respect of the Swiss Confederation:

(i) Natural persons who, according to Swiss law, are considered to be its nationals;

(ii) Companies including corporations, partnerships, business associations and other organizations, which are constituted or otherwise duly organised under Swiss law, as well as companies not established under Swiss law but effectively controlled by Swiss nationals or by companies established under Swiss law;

b. In respect of the United Arab Emirates:

(i) Natural persons holding the nationality of the United Arab Emirates in accordance with the laws of the United Arab Emirates;

(ii) Any entity, with or without legal personality, established in accordance with the laws of the United Arab Emirates, and having its seat in the United Arab Emirates, such as enterprises, cooperatives, partnerships, corporations, foundations, companies, firms, establishments, funds, organizations and business associations or similar entities, irrespective of whether their liabilities are limited or not;

(iii) The Government of the State of the United Arab Emirates acting either directly or indirectly through their local and federal financial institutions as well as development funds, agencies or other similar government institutions having their seats in the United Arab Emirates.

(2) The term "investments" 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, including deposits and placements, or any other claims to a performance having an economic value;

(d) Intellectual property rights, in particular copyrights, trademarks, patents, industrial designs and other industrial property

rights, know-how, trade and business secrets, technical processes, trade names, indications of origin and goodwill;

(e) Concessions or similar rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties or fees, and payment in kind including returns from reinvestment.

(4) The term "territory" means the territory of the Contracting Parties, including the territorial sea and any islands as well as the exclusive economic zone and the continental shelf that extend beyond the limits of the territorial waters and over which the State concerned may exercise, in accordance with national and international law, sovereign rights or jurisdiction.

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.

Article 3. Promotion, Admission

(1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with such an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.

Article 4. Protection, 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, expansion, or disposal of such investments.

(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 or economic 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.

Article 5. Free Transfer

(1) Each Contracting Party shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- (a) Returns;
- (b) Payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
- (c) Proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
- (d) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- (e) The initial capital and additional amounts to maintain or increase the investment.

(2) 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.

Article 6. Dispossession

(1) Neither of the Contracting Parties shall take 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 measures are taken in the public interest, against prompt and adequate compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application. The legality of any such expropriation and the amount of compensation shall at the request of the investor be subject to review by due process of law.

(2) The compensation referred to in paragraph (1) shall be equivalent to the fair market value of the investment, as determined in accordance with recognised principles of valuation such as, inter alia, the capital invested, replacement value, appreciation, current returns, goodwill and other relevant factors, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is earlier. The amount of compensation shall carry the usual commercial interest from the date of dispossession until payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.

(3) For the avoidance of doubt it is confirmed that the term "expropriation" also comprises acts or interventions by a Contracting Party such as the freezing or blocking of assets or other comparable measures, including compulsory sales of assets, if the effect of such measures would be tantamount to expropriation.

(4) Investments by investors of either Contracting Party shall not be subjected to sequestration, confiscation or any similar measures except under due process of law.

Article 7. Compensation for Damages or Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, insurrection or riot or other similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is the most favourable. Resulting payments shall be in a freely convertible currency and freely transferable without delay.

(2) Investors of one Contracting Party who in any of the events referred to in paragraph (1) suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) Requisition of their investment or property by its forces or authorities, or

(b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt and adequate compensation for the the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely convertible currency and freely transferable without delay.

Article 8. Principle of Subrogation

(1) 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 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.

(2) Questions arising from the subrogation will be consulted among the Contracting Parties on the request of either side.

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, consultations will take place between the parties concerned with a view to solving the case amicably.

(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 to the competent court of the Contracting Party in the territory of which the investment was made.

(3) If after twenty-four months from the date of request for consultations the dispute between the parties continues to exist, the investor may refer the case to either of the following:

a) 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); or

b) The International Centre for the 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 at Washington, on March 18, 1965.

(4) Both Contracting Parties herewith declare their consent to submit the dispute to arbitration in accordance with paragraph (3) above.

(5) 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.

(6) The arbitral award shall be final and binding for the parties to the dispute and shall be executed according to national law.

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 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, within two months of the written request to submit the dispute to arbitration, appoint one arbitrator, and these two arbitrators shall, within two months of their appointment, nominate a chairman who shall be a national of a third State that has diplomatic relations with the Contracting Parties.

(3) If the periods specified in paragraph (2) above have not been observed, 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, too, is prevented from discharging the said function, the member of the court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

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(4) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its arbitrator and of its representation in the arbitral proceedings; the costs of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different ruling concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11. Other Rules and Special Commitments

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

(2) Special contracts or commitments undertaken by one Contracting Party with respect to investments by investors of the other Contracting Party shall prevail over this Agreement to the extent that their provisions are more favourable.

(3) Each Contracting Party shall observe any particular obligation it has assumed with regard to an investment in its territory by investors of the other Contracting Party.

(4) Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action necessary for reasons of public security and order, public health or morality.

Article 12. Relations between Contracting Parties

This Agreement shall remain in force irrespective of the existence of diplomatic relations between the Contracting Parties.

Article 13. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that their legal requirements for the entry into force of international agreements have been fulfilled and shall remain in force for a 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.

(2) In case written notice of termination of this Agreement is given, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years for investments made before said notice. Articles 1 to 12 shall continue to be effective for a further period of ten years for investments made before said notice.

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

Done in duplicate, at Abu Dhabi, on 3rd November 1998, corresponding to 14 Rajab 1419 in German, Arabic and English languages, each text being equally authentic. In case of divergencies the English text shall prevail.