

Agreement between the Swiss Confederation and the Dominican Republic on the Promotion and Protection of Investments

Preamble

The Swiss Federal Council and the Government of the Dominican Republic, hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation to the mutual benefit of both States,

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, on a basis providing for stability, justice and fairness,

Recognizing that the promotion and reciprocal protection of foreign investments through an international agreement will stimulate capital flows and business initiatives and thus foster economic prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) 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, such as subsidiaries and affiliates, established under the law of any country, that are controlled, directly or indirectly, by nationals as defined in (a) above or by legal entities as defined in (b) above.

(2) The term "investments" shall include every kind of asset, in particular, though not exclusively:

(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), technical processes, 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 decision of the authority in accordance with the law.

A change in the form in which assets are invested does not affect their character as investments.

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

(4) The term "territory" means the land territory, internal waters and territorial sea of a Contracting Party and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws in force and 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 which have arisen prior to its entry into force.

Article 3. Promotion, 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) A Contracting Party that has admitted an investment on its territory shall grant, in accordance with its laws and regulations, all the necessary permits in connection with such an investment, including for the carrying out of licensing agreements and for technical, commercial or administrative assistance, as well as permits for the activities of consultants or other qualified persons of foreign nationality.

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, extension, 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 union, a common market or any other form of economic integration, as well as any international agreement aimed at facilitating local trans-border trade, or by virtue of an intergovernmental agreement relating wholly or mainly to 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 in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the amounts relating to these investments, in particular of:

(a) Returns;

(b) Repayments of loans;

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

(d) Royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement; letters (c), (d) and (e) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance or development of the investment;

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

(2) It is understood that the right of an investor to freely transfer payments in relation to his investment is without prejudice to any fiscal obligation such an investor may have.

Article 6. Dispossession, Compensation

Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization 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, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such 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. The amount of compensation shall be settled in a freely convertible currency and paid without delay to the person entitled thereto, without regard to its residence or domicile. In case of any delay in such payment the amount of compensation shall include interest at the market rate to be determined in accordance with the "International Financial Statistics" published by the International Monetary Fund.

Article 7. Compensation for Losses

The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 8. 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 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. 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 Contracting Parties), consultations will take place between the parties concerned. Article 10 of this Agreement (Disputes between 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 "Washington Convention"), if both Contracting Parties are parties to the Convention; or the Additional Facility Rules of ICSID if only one Contracting Party is a party to the Convention;

(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).

Each Contracting Party by means of this Agreement irrevocably and unconditionally consents to the submission of an investment dispute to international arbitration.

(3) 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 Washington Convention, be treated as a company of the other Contracting Party.

(4) 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 or will receive, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(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 without delay according to the law of the Contracting Party involved.

Article 10. Disputes between Contracting Parties

- (1) Disputes between 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 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.
- (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 the Contracting Parties, unless they decide otherwise.
- (7) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (8) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Consultations and Exchange of Information

- (1) The Contracting Parties shall consult on any matter concerning the implementation of this Agreement.
- (2) Upon request by a Contracting Party, information shall be exchanged on measures adopted by the other Contracting Party that may affect the investments or returns protected by this Agreement

Article 12. Other 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) 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 13. Final Provisions

- (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 binding for a period of fifteen 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 a period of two years, and so forth.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of fifteen years for investments made before official notice was given.

For the Swiss Federal Council

For the Government of the Dominican Republic

