

Agreement between the Swiss Federal Council and the Government of the Republic of Tajikistan on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Federal Council and the Government of the Republic of Tajikistan,

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 "investments" shall include every kind of asset in particular but not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as mortgages, 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) intellectual property rights (such as copyrights, patents, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law to undertake an economic activity, including to search for, extract or exploit natural resources.

(2) The term "investor" refers with regard to either Contracting Party to

(a) natural persons having the nationality of that Contracting Party;

(b) legal persons constituted under the law of that Contracting Party;

(c) legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (a) or legal persons as defined in (b).

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

(4) The term "territory" means the territory of either Contracting Party as defined by the laws of the Contracting Party concerned in accordance with 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 its entry into force. It shall however not be applicable to claims arising out of events which occurred prior to its entry into force.

Article 3. Promotion, Admission of Investments

(1) Each Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its rights to exercise powers conferred by its laws, each Contracting Party shall admit such investments.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all necessary permits or authorisations in connection with such investment including authorisations required for the activities of managerial and technical personnel of the investor's choice.

Article 4. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments of investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if the latter is more favourable. National treatment or most favoured nation treatment respectively, shall also be accorded to the investors of either of the Contracting Parties as regards their activities related to investments covered by this Agreement.

(3) 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.

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 (1), letters (c), (d) and (e) of this Agreement;
- (e) earning of natural persons;
- (f) additional contributions of capital necessary for the maintenance or development of the investment;
- (g) the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values;
- (h) payments arising under Article 7 of this Agreement.

(2) For the avoidance of doubt it is confirmed 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

(1) 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. The amount of compensation, interest

included, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.

(2) 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 paragraph (1) of this Article will be made available to such investors.

Article 7. Compensation for Losses

The investors of one Contracting Party whose investments have suffered losses due to war or other armed conflict, state of national emergency, civil disturbance, or other similar event, 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, paragraph (2) of this Agreement as regards restitution, indemnification or other settlement.

Article 8. Other Commitments

Each Contracting Party shall observe any obligation it may specifically have entered into with regard to investments in its territory by investors of the other Contracting Party.

Article 9. More Favourable Provisions

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 or rules shall to the extent that they are more favourable prevail over this Agreement.

Article 10. 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 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 11. 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 request for consultations, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice between 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 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, once both Contracting Parties have become members of this Convention.

(3) Both Contracting Parties declare their consent to submit the dispute to arbitration in accordance with paragraph (2) above.

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

(5) The Contracting Party which is party to the dispute shall not at any time during the procedures assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the damage or loss incurred.

(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 on the parties to the dispute and shall be executed according to national law.

Article 12. 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 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) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

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

Article 13. Modifications

This Agreement may be amended or supplemented by mutual consent of the Contracting Parties.

Article 14. 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 ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five 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 ten years for investments made before official notice was given.

Done in duplicate, at Dushanbe on 11 June 2009, each in Tajik, French, Russian and English, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council

For the Government of the Republic of Tajikistan