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

The Swiss Confederation and the Republic of Ghana

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,

Recognizing the need to promote and protect foreign 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 means investor in respect of either Contracting Party,

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established in accordance with the law of any country, effectively controlled by nationals of that Contracting Party, who possess a substantial part in title.

(2) The term "investment" includes all categories of assets and in particular:

(a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having an economic value;

(d) Copyrights, industrial property rights, such as patents, utility models, industrial designs, trademarks, trade marks, trade names, indication of origin), know-how and any other form of commercial capital;

(e) The concessions, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

(3) The term territory includes the maritime areas adjacent to the coastal State may exercise of their sovereignty or jurisdiction in accordance with international law.

Article 2. Encouragement , Admission

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

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations the necessary permits in connection with such investments and with the carrying out of licensing agreements,

technical, commercial or administrative assistance. each Contracting Party shall issue, whenever necessary, required authorisations for matters concerning the activities of qualified consultants and other opportunities of foreign nationality.

Article 3. Protection

Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments.

Article 4. Treatment

(1) Each Contracting Party shall in its territory fair and equitable treatment to investments of 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 or by its own investors than that granted by each contracting party to investments made in its territory by investors of a third State, if the latter is more favourable treatment.

(2) The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its present or future membership in a free trade area, customs or economic union or a similar regional organization.

Article 5. Introduction

(1) As regards the taxes and fees as well as the tax reductions or exemptions, each Contracting Party shall accord to investors of the other Contracting Party, carrying out an economic activity through a legal entity in the territory of the first treatment, which shall not be less favourable than that accorded to its own or investors than that accorded to nationals of a third State, if the latter is more favourable treatment to the investor.

(2) However, will not be taken into consideration the special tax advantages accorded by that Contracting Party by virtue of a double taxation agreement, its present or future membership in a free trade area, customs or economic union or a similar regional organization.

Article 6. Returns of Investments and Income

Each Contracting Party in whose territory of investors of the other Contracting Party has made investments, to grant those investors the free transfer of payments related to these investments, including:

(a) Profits, dividends, interests and other current income;

(b) Such as loans;

(c) The amounts to be used to cover expenses relating to the management of the investment;

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

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

(f) The proceeds of the sale of or the partial or total liquidation of an investment including capital gains.

Article 7. Expropriation

(1) Investments of investors of one Contracting Party effected within the territory of the other Contracting Party shall not be subjected to measures of expropriation, nationalization or any other measures having the same effect (referred to as expropriation) unless the following conditions are complied with:

(a) The measures shall meet for reasons of public purpose related to the internal needs of that Contracting Party, be non-discriminatory and comply with legal requirements.

(b) These measures must be accompanied by provisions for the payment of compensation in the form of full and genuine value of the investment at the time immediately before the expropriation or impending expropriation became public, whichever is decisive.

(c) Payments of compensation shall be paid without undue delay and in a freely convertible currency accepted by the

claimant and shall be freely transferable to the country designated by the latter.

(d) In cases where compensation would not be paid within six months of the establishment of interest, the amount calculated according to the trade usages will be paid from that date until the time of payment.

(2) The Investor affected by such a measure is entitled to claim that the amount of compensation shall be set as soon as possible by legal decision, according to the Law of the State which has decided, expropriation or by agreement between the parties. without prejudice to the procedures set out in articles 12 and 13 of this Agreement, it shall be entitled to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in paragraph (1) of this article.

Article 8. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other Contracting Party, shall be treated in accordance with article 4 of this Agreement. in any event, they shall be compensated.

Article 9. Investments Made Prior to the Agreement

This Agreement shall also apply to investments in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party prior to the entry into force of this Agreement.

Article 10. Other Conditions

Notwithstanding the conditions laid down in this Agreement, the more favourable conditions which have been or will be agreed by one of the Contracting Parties with investors of the other Contracting Party shall apply.

Article 11. Principle of Subrogation

Where 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 on the basis 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 12. Settlement of Disputes between an Investor and the Host Country

(1) Disputes between a Contracting Party and an investor of the other contracting party concerning an obligation of the former under this Agreement and to an investment of an investor of the other Contracting Party in the territory of the first shall, as far as possible, be settled amicably.

(2) If these disputes cannot find amicable solution according to paragraph (1) of this Article within six months from the date of the written request of a Contracting Party, the dispute shall be submitted to international arbitration or conciliation.

(3) If the dispute shall be submitted to international arbitration or conciliation the injured party may choose to apply:

(a) The International Centre for the Settlement of Investment Disputes (in accordance with the provisions of the Washington Convention of 18 March 19651 for the Settlement of Investment Disputes between States and Nationals of Other States, and the additional facility for the administration of arbitration procedures and fact-finding provided it is applicable); ou1 for the Settlement of Investment Disputes between States and Nationals of Other States, and the additional facility for the administration of arbitration procedures and fact-finding provided it is applicable); or

(b) To designate an international arbitrator or ad hoc arbitration tribunal to be imposed in accordance with a special agreement or any arbitration in accordance with the rules of procedure of the United Nations Commission on United Nations Commission on International Trade Law.

(4) Each Contracting Party undertakes in this Agreement to submit the dispute to arbitration or conciliation on international investment disputes.

Article 13. 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 fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint 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 such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two 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 exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) The decisions of the Tribunal are final and binding on the contracting parties.

Article 14. Compliance

Each Contracting Party shall at all times compliance with the obligations assumed by it in respect of investments of investors of the other contracting party.

Article 15. Final Provisions

(1) This Agreement shall enter into force on the day on which the two Governments that have notified the constitutional formalities required for the conclusion and entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced in writing six months before the expiry of this period, there shall be considered on the same terms as renewed for a period of five (5) years and so on.

(2) In the event of termination, the provisions of articles 1 to 14 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.

8 October 1991

Enter into force by exchange of notes on 16 June 1993

(State on 15 June 1999)