# Agreement between the Swiss Confédération and the Republic of Trinidad and Tobago on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Republic of Trinidad and Tobago,

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 State in the territory of the other State,

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

Convinced that these objectives can be achieved without relaxing health, safety and environmental measures of general application,

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to any of the following natural or juridical persons that seek to make, are making or have made an investment:

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

(b) juridical persons, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party;

(c) juridical persons not established under the law of that Contracting Party

(i) in which more than 50 per cent of the equity interest is owned by persons of that Contracting Party; or

(ii) in relation to which persons of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.

(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;

(b) shares, stock, debentures and any other form of participation in a company;

(c) claims to money or to any performance having an economic value, except for loans that are not connected with an investment;

(d) intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) business concessions or similar rights conferred by law or under contract, including concessions to search for, cultivate, 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 and fees.

(4) The term "territory" means:

(a) in respect of the Swiss Confederation: the territory of Switzerland as designated in its laws in accordance with international law;

(b) in respect of the Republic of Trinidad and Tobago: the archipelagic State of Trinidad and Tobago, comprising the several islands of Trinidad and Tobago, its archipelagic waters, territorial sea and airspace thereof, together with the adjacent submarine areas of the exclusive economic zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights or jurisdiction in accordance with the laws of Trinidad and Tobago and 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 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, Admission

(1) Each Contracting Party shall in its territory encourage and create favourable conditions for 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 necessary permits or authorisations in connection with such investment including permits for the carrying out of ‘licensing agreements and contracts for technical, commercial or administrative assistance as well as authorisations required for the activities of managerial and technical personnel of the investor's choice, regardless of 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 or a common market or by virtue of an international agreement regarding matters of 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 the unrestricted transfer of amounts relating to such investments, and 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) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement; .

(e) earnings and other remuneration of personnel lawfully engaged from abroad in connection with the investment;

(f) additional contributions of capital necessary for the maintenance or development of the investment;

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

(2) Transfers shall be effected without delay in a freely convertible currency, at the applicable exchange rate at the date of the transfer.

(3) It is understood that the provisions of paragraphs 1 and 2 of this Article are without prejudice to the equitable, non-discriminatory and good-faith application of laws:

(a) to protect the rights of creditors;

(b) relating to or ensuring compliance with laws and regulations

(i) on the issuing, trading and dealing in securities, futures and derivatives,

(ii) concerning reports or records of transfers, or

(c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings.

## Article 6. Dispossession, Compensation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. 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 paragraph.

(2) The investors of one Contracting Party whose investments have suffered losses due to 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 treatment in accordance with Article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement. Resulting payments shall be freely transferable.

## Article 7. 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) Payments made under this Article shall not affect the rights of the beneficiary of the guarantee to have recourse to any dispute resolution procedure in accordance with this Agreement.

## Article 8. 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 concerning an obligation under this Agreement consultations shall 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; 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) ; or

(c) arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

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

(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, under 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 concerned.

## Article 9. 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 the dispute between the Contracting Parties cannot be settled within a period of six months from the date at which the issue was raised in writing by one of the Contracting Parties, it shall upon request of either Party to the dispute be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then within two months select a national of a third State who shall be the Chairman of the tribunal.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make any 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 is also otherwise prevented from discharging the said function, the Member of the International Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall determine its own procedures. Unless otherwise agreed by the Contracting Parties, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the Chairman. The tribunal shall reach its . decisions by a majority of votes, and it shall render its award within two months of the date of final submissions or date of the closing of the hearings, whichever is later.

(6) The decisions by the tribunal shall be final and binding upon both Contracting Parties. 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.

## Article 10. Other Commitments

(1) If provisions in the law of either Contracting Party or obligations under 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 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 11. 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 and shall continue in force unless either Party serves the other with twelve months written notice of termination.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate, at. , in English and French language, each text being equally authentic.

For the Swiss Federal Council

For the Government of the Republic of Trinidad and Tobago