

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

The Swiss Federal Council and The Government of Turkmenistan,

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 purpose of this Agreement:

(1) 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 mortgages, liens, usufructs;
- (b) shares, parts or any other kind of participation in companies;
- (c) claims to money or to any performance having an economic value;
- (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 by decision of the authority in accordance with the law.

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

- (a) any natural person who, according to the law of that Contracting Party, is considered to be its national;
- (b) any juridical person which is constituted or otherwise duly organised under the law of that Contracting Party and is engaged in substantive business operations in that Contracting Party;
- (c) any juridical person not established under the law of that Contracting Party
 - (i) in which more than 50 per cent of the equity interest is beneficially 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 its directors or otherwise legally direct its actions.

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

(4) The term "territory" means the territory of each Contracting Party and includes the maritime areas adjacent to the coast of the State concerned, as well as the exclusive economic zone and the continental shelf over which the State concerned may exercise, in accordance with national and international law, sovereign rights or jurisdiction.

Article 2. Scope of Application

(1) 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.

(2) Swiss investors within the meaning of Article 1 paragraph (2) letter (c) of this Agreement may not invoke the provisions of this Agreement until such time as Turkmenistan will have acceded to the WTO.

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) When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and 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. Treatment of investors themselves as regards the management, maintenance, use, enjoyment or disposal of their investments, shall also be not less favourable than that accorded by a Contracting Party to its own investors or to investors of any third State.

(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 shall grant the 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) Payment 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) 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) 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. 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, interest included, shall be settled in the currency of the

country of origin of the investment and paid without delay to the person entitled thereto.

(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.

(3) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of the latter, from a treatment not less favourable than that granted to its own investors or those of any third State as regards restitution, indemnification, compensation or other settlement.

Article 7. 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 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, 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 request for consultations, the investor may submit the dispute for settlement to:

(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 18 March 1965 (hereinafter the „Convention of Washington"); 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).

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

(4) The Contracting Party which is party to the dispute shall at no time whatsoever during the procedures assert as a defence its immunity or the fact that the investor has received a compensation under an insurance contract 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 according to national law.

Article 9. Disputes between the 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 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 on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(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 agreement, 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 too is otherwise prevented from discharging the said function, the Member of the International Court of Justice 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 the Contracting Parties agree otherwise. The tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules and principles of international law. It shall reach its decisions by a majority of votes. The decisions by the tribunal shall be final and binding upon both Contracting Parties.

Article 10. 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 11. Consultations

The two Contracting Parties may at any time, by common consent, take up consultations on issues relating to the application of the Agreement or on any other investment-policy matter of mutual interest. Either Contracting Party may request such consultation through diplomatic channels.

Article 12. 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 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 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

(3) The Contracting Parties may at any time agree on amendments of the present Agreement, the entry into force of such amendments being subject to the same legal requirements as the entry into force of this Agreement.

Done in duplicate, at Ashgabat, on 15 May 2008, each in English, Turkmen, Russian and French, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.