

# **Agreement between the Swiss Federal Council and the Government of the Federal Republic of Nigeria on the reciprocal promotion and protection of investments**

## **Preamble**

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

Desiring to intensify economic cooperation to the mutual benefit of both States;

Determined to create favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the reciprocal promotion and protection of such investments will be conducive to the stimulation of individual business initiative, contribute to development and increase prosperity in both States;

Recognising the right of each Contracting Party to define the conditions under which foreign investment can be received and the investor's duty to respect the host Country's Sovereignty and laws;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

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

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

(ii) 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 that same Contracting Party;

(iii) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(b) The term "investments" shall comprise every kind of asset and more particularly, though not exclusively:

(i) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs, and similar rights;

(ii) Shares, stocks and debentures of a company;

(iii) Titles to money or to any performance having an economic value;

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

(v) 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.

(c) The term "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

(d) The term "territory" includes the territorial sea and any maritime area situated beyond the territorial sea of the State concerned which has been or might in the future be designated under their national laws in accordance with international law as an area within which they may exercise rights with regard to the sea bed and subsoil and the natural resources.

## **Article 2. Promotion and Admission**

(1) Each Contracting Party shall within its territory promote as far as possible investments by investors of the other Contracting Party and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall grant in accordance with its laws and regulations, 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. Furthermore, 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 3. Protection and Treatment**

(1) Investments 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.

(2) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to investments or returns of investors of any third State.

(3) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to any investors of third State.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, either Contracting Party may grant within the framework of its development policy to its own investors special incentives in order to stimulate the creation of local industries, provided they do not significantly affect the investment and activities of investors of the other Contracting Party in connection with an investment. paragraphs (2) and (3) of this Article, either Contracting Party may grant within the framework of its development policy to its own investors special incentives in order to stimulate the creation of local industries, provided they do not significantly affect the investment and activities of investors of the other Contracting Party in connection with an investment.

(5) The treatment of the most favoured nation according to paragraphs (2) and (3) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from: paragraphs (2) and (3) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade agreement, a customs or economic union or a similar regional organization to which either of the Contracting Parties is or may become a party;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

## **Article 4. Transfers**

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of payments in connection with an investment, particularly 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 (b) (iii), (iv) and (v); (iii), (iv) and (v);

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

(f) The proceeds of the sale or of the partial or total liquidation of the investment.

(2) Transfers of currency shall be effected without delay in a freely convertible currency. Such transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

## **Article 5. Expropriation**

(1) Neither of the Contracting Parties shall take measures of expropriation, nationalization, dispossession or any other measures having the same effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, which shall have been fixed at the time of expropriation, shall be settled in a freely convertible currency and paid without undue delay.

(2) 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 the latter, from a treatment in accordance with Article 3 of this Agreement as regards restitution, indemnification, compensation or other settlement. Article 3 of this Agreement as regards restitution, indemnification, compensation or other settlement.

## **Article 6. Subrogation**

Where one Contracting Party has granted any financial guarantee against non-commercial risks in respect of an investment by an investor in the territory of the other Contracting Party and payment has been made by the first Contracting Party to its own investor, the other Contracting Party shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor.

## **Article 7. Other Obligations**

(1) If the legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that it is more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## **Article 8. Settlement of 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 settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) 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; or

(c) 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 a 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 compensation under an insurance contract covering the whole or part of the incurred damage or loss.

(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 award rendered by such an arbitral tribunal.

## **Article 9. Settlement of Disputes between the Contracting Parties**

(1) Disputes as to the interpretation or application of the provisions of this Agreement should as far as possible be settled by means of diplomatic negotiations.

(2) If both Contracting Parties cannot reach an agreement within six months, the dispute shall, upon the 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. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(3) If within the periods specified in paragraph (2) 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 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. paragraph (2) 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 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.

(4) The tribunal shall determine its own procedure but shall reach its decision by a majority of votes. Such decision shall be binding on 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. The tribunal may, however in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

## **Article 10. Applicability**

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation prior to the entry into force of this Agreement by investors of the other Contracting Party.

## **Article 11. Amendment**

Any amendment to or revision of this Agreement shall be in writing and shall come into effect following the consent of both Contracting Parties, and after 30 days of the completion of exchange of notes through official channels to that effect.

## **Article 12. Duration and Termination**

(1) This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the required legal procedures in their respective countries have been complied with, and shall remain in force for a period of ten years. This Agreement shall automatically remain in force thereafter, unless either Contracting Party shall have given written notice of termination to the other. In such case the Agreement will be terminated twelve months from the date on which the written notice was given.

(2) In respect of investments made before the date of the termination of this Agreement the foregoing articles shall continue to be effective for a further period of ten years from that date.

IN WITNESS THEREOF the Undersigned, being duly authorized by their respective Governments, have signed this Agreement.

For the Swiss Federal Council

For the Government of the Federal Republic of Nigeria