

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

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

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 purposes of this Agreement:

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

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

(b) legal entities, including companies, corporations, business associations and other enterprises or organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established under the law of any country which are effectively 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.

(2) The term "investment" shall include every kind of assets and particularly:

(a) movable and immovable property as well as any other rights in rem;

(b) shares, parts of any kind of participation in companies or other legal entities;

(c) claims to money or to any performance having an economic value;

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

(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.

(3) The term "territory" refers to the territory of the State concerned over which that State may exercise sovereign rights or jurisdiction in accordance with international law.

Article 2. Encouragement, 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, in accordance with its laws and

regulations, the necessary permits in connection with such investments and with the carrying out of licensing agreements, and contracts for technical, commercial or administrative assistance.

Article 3. Protection, Treatment

(1) 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 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 or 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 treatment is more favourable.

(3) The treatment of the most-favoured-nation 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 union or a similar regional organization to which either of the Contracting Parties is or may become a member;

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

Article 4. Free Transfer

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 payments relating to these investments, particularly of:

(a) interests, dividends, benefits and other current 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 (2), 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 sale or of the partial or total liquidation of the investment, including possible increment values.

Article 5. Dispossession, Compensation

(1) Neither Contracting Party shall take, 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 by public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for adequate compensation. The amount of compensation, interest included, shall be effectively realisable and freely transferable and shall be paid without delay to the person entitled thereto without regard to its residence or domicile.

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

(3) Where a Contracting Party expropriates or nationalize an investment in the form of a legal entity established under its laws with participation of an investor of the other Contracting Party, compensation according to paragraph (1) of this Article shall be made available to the investor of the other Contracting Party in an amount corresponding to his financial participation in the investment.

Article 6. Pre-agreement Investments

This Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and

regulations by investors of the other Contracting Party prior to the entry into force of this Agreement.

Article 7. More Favourable Provisions

(1) Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with investors of the other Contracting Party are applicable.

(2) If the legislation of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

Article 8. 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 9. 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 and without prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), 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 the Settlement of Investment Disputes (ICSID) established by the Convention of Washington of March 18, 1965 for the settlement of disputes regarding investments between States and Nationals of other States; or

(c) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under, and shall follow, 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 arbitration.

(4) The Contracting Party which is a party to the dispute shall at no time whatsoever during the settlement procedure or the execution of the award, allege 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 the arbitral tribunal.

Article 10. Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be resolved through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within twelve 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 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, 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 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the day when both Contracting Parties have given each other written notice that they have complied with the constitutional requirements for the conclusion and 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

Done at Minsk, on May 28, 1993, in two originals, in the French, Belarusian and English language, each text being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council

(sig. J.-P. Delamuraz)

For the Government of the Republic of Belarus

(sig. N.N. Kostikov)