

Agreement between the Government of the Swiss Confederation and the Government of the Republic of Panama on the Promotion and Protection of Investments

The Government of the Swiss Confederation and the Government of the Republic of Panama:

Reiterating their desire to strengthen economic cooperation between the two countries;

Recognizing the complementary role private foreign capital investment in the process of economic development and the right of each State to determine the role and determine the terms and conditions for the participation of foreign investment in this process;

Affirming that to promote and maintain international capital flows, it is necessary to establish and maintain an appropriate climate for development and the restoration of private investment, which fully respects the sovereignty and in full accordance with the laws of the host State having jurisdiction over them and complying with the policies and priorities adopted by the host country in order to ensure the effectiveness of their contribution to development;

Noting their common intention to create favourable conditions for investment in both States and intensify cooperation between their nationals and companies or public law in the fields of technology, industrialization and productivity; and Recognizing the need to protect investments of nationals and companies of the two States and fostering the transfer of capital with a view to promoting economic prosperity of both States;

Have agreed as follows:

Article 1.

Each Contracting Party shall promote as far as possible, the investments made in its territory by nationals or companies of the other Contracting Party and admit such investments in accordance with its legal provisions in force.

Article 2.

a) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not prevent undue or discriminatory measures, by the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments. each Contracting Party shall endeavour to grant the necessary permits in connection with such investments and within the framework of its laws, the performance of contracts, technical assistance, commercial or administrative. each Contracting Party shall endeavour, whenever necessary, to provide the necessary permits in relation to the professional activities of consultants and experts appointed by nationals or companies of the other contracting party.

b) Each Contracting Party shall in its territory fair and equitable treatment, in accordance with its domestic court and the rules of international law, to investments of nationals or companies of the other contracting party. this treatment shall be at least equal to that granted by each contracting party to investments made within its territory by its own nationals or companies, or if it is more favourable by nationals or companies of the most favoured nation.

c) The treatment referred to above shall not apply to privileges which either Contracting Party accords to nationals and companies of any third State by virtue of its participation in a customs union or association, a common market or a free trade area.

Article 3.

Each Contracting Party agrees that, in respect of investments made in its territory by nationals or companies of the other Contracting Party, convertibility of payments listed below and their transfer will continue to be made freely and without

restriction:

- a) Profits, dividends, interests and other current income;
- b) Depreciation and contractual payments;
- c) Amounts intended to cover expenses relating to the management of the investment;
- d) Royalties and other payments deriving from licence fees and commercial, administrative or technical assistance;
- e) Additional contributions of capital necessary for the maintenance or development of the investments;
- f) The proceeds of sale or of the partial or total liquidation of an investment including capital gains.

Article 4.

Neither Contracting Party shall take any measures of expropriation, nationalization or dispossession, other direct or indirect, against investments made by nationals or companies of the other contracting party except for reasons of public purpose or social interest and provided that such measures are not discriminatory, that they comply with the legal provisions in force and provide for payment of adequate and effective compensation. The amount of compensation, which shall be fixed at the time of expropriation, nationalization or dispossession, other shall be paid to the beneficiary regardless of domicile, or in a currency freely transferable without undue delay.

Article 5.

This Agreement shall also apply to investments in the territory of a Contracting Party by nationals or companies of the other contracting party prior to the entry into force of this Agreement. But this Agreement shall not apply in any case to differences or disputes which occurred prior to the entry into force of this Agreement.

Article 6.

If one of the Contracting Parties has agreed with nationals or companies of the other contracting party more favourable conditions, these conditions shall replace those agreed in this Agreement.

Article 7.

If one of the Contracting Parties has granted a financial guarantee against non-commercial risks to an investment made by a national or enterprise in the territory of the other contracting party, and that the first Contracting Party has made a payment to its own nationals or to its own society, the other Contracting Party shall recognize the rights of the first Contracting Party the rights of the investor by virtue of the principle of subrogation.

Article 8.

For the purposes of this Agreement:

- a) The "nationals" are natural persons who, according to the legislation of each of the Contracting States, as the case may be, shall have the nationality or citizenship of that State.
- b) The "companies" are:
 - i) As regards the Swiss Confederation, communities, schools or foundations with legal personality, as well as partnerships or limited and other communities of persons without legal personality in which nationals of Switzerland, directly or indirectly, a preponderant interest;
 - ii) With respect to the Republic of Panama, all legal persons constituted in accordance with the legislation in force in Panama, as well as the companies and associations with or without legal personality having their headquarters in the territory of the Republic of Panama, with the exception of State enterprises.
- c) The term "investment" includes all categories of goods such as:
 - i) Ownership of movable and immovable property as well as any other real rights and rights;
 - ii) Shares and other forms of equity interests in companies;

- iii) Monetary claims and rights to any performance having an economic value;
- iv) Copyrights and industrial property rights, such as patents, trademarks, industrial designs, trade names, know-how and goodwill ("customer");
- v) Concessions under public law, including extract concessions to search for or exploit natural resources.

Article 9.

For the purpose of solving disputes with respect to investments between a Contracting Party and a national or company of the other contracting party and without prejudice to article 10 of friendly consultations will be held for this purpose between the parties concerned.

If these consultations do not friendly solution within a period of six months, the parties concerned shall use the specific procedures agreed between the Contracting Party and a national or company of the other contracting party. in the absence of any such specific procedures, the dispute shall be submitted to international arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the United Nations General Assembly in its resolution 31 / 98 of 15 December 1976 and in the light of the provisions of this Agreement. the appointing authority under Article 7 of the UNCITRAL Arbitration Rules is the Secretary-General of the Permanent Court of Arbitration at The Hague.

Article 10.

- a) Disputes between the contracting parties concerning the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- b) If both contracting parties do not reach a settlement within six months, the dispute 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.
- c) If one of the Contracting Parties has not appointed its arbitrator and has not responded to the request by 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.
- d) 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.
- e) If in the cases specified under paragraphs (c) and (d) 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 shall be made by the most senior member of the Court who is not a national of either of the Contracting Parties.
- f) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
- g) The decisions of the Tribunal shall be binding on the contracting parties.

Article 11.

- a) This Agreement shall enter into force on the day on which the two Governments have notified each other that the constitutional formalities required for the conclusion and entry into force of international agreements have been completed. the Agreement shall remain valid for a period of five years; unless it is denounced in writing six months before the expiry of this period, there shall be considered as renewed for a period of two years, and in the future will be renewed in the same manner.
- b) In the event of termination, the provisions of articles 1 to 10 above shall apply for a period of ten years for investments made prior to the termination of the Agreement.

Exchange of letters of 19 October 1983

Panama, October 19, 1983

His Excellency

Mr. Oyden Ortega Duran

Minister of Foreign Affairs

of the Republic of Panama

Panama

Dear Minister,

I have the honour to acknowledge receipt of your letter of October 19, 1983, the contents of which are as follows

"With regard to the timing of the payment of compensation in accordance with Article 4 of the Agreement on the Promotion and Protection of Investments between the Swiss Confederation and the Republic of Panama, it is accepted that it is exceptionally in the event of war, serious disturbance of public order or urgent social interest, that the executive body of the Republic of Panama may pay the value of the damages and prejudices caused by expropriation or occupation at the time when the events listed above come to an end, in accordance with the relevant provision of Article 47 of the Political Constitution of the Republic of Panama. In the event that the previous situation continues, the Contracting Parties shall agree to appoint special representatives to examine, and if possible resolve, these problems in the first instance."

I have the honor to confirm that I agree with the content of your letter. Please accept, Mr. Minister, the assurances of my highest consideration. On behalf of the Government of the Swiss Confederation.

René Rodé