

Agreement between Mongolia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investment

The Swiss Federal Council and the Government of Mongolia,
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 purposes of this Agreement:

1. the term means investor in respect of either Contracting Party,
 - a. Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
 - b. Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;
 - c. Legal entities established in accordance with 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.
2. The term "investment" includes all categories of assets and in particular:
 - a. Ownership of movable and immovable property as well as any other rights in rem, such as land charges and guarantees;
 - b. The actions, and other forms of participation shares in companies;
 - c. Monetary claims, including the good and obligations and rights to any performance having an economic value;
 - d. Property rights, copyrights, industrial processes, technical know-how and goodwill;
 - e. Business concessions and other rights to engage in economic activities conferred by law or under contract, including extract concessions to search for or exploit natural resources.
3. The term means the returns derived from an investment amounts and includes in particular, though not exclusively, profits, interest, dividends, royalties and fees.

Article 2. Scope

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force.

Article 3. Encouragement , Admission

1. Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.
2. Once it has admitted an investment in its territory, each Contracting Party shall issue the necessary permits in connection

with such investments and with the carrying out of licensing agreements, technical, commercial or administrative assistance. each Contracting Party shall, whenever necessary, issue the required authorisations for the activities of consultants and other qualified persons of foreign nationality.

Article 4. 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 hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increased or disposal of such investments.

2. Each Contracting Party shall accord in its territory fair and equitable treatment to investments of 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 than that granted by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if the latter is more favourable.

3. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, a common market or a similar regional organization or by virtue of an agreement for 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 in whose territory of investors of the other Contracting Party has made investments to guarantee the investors the unrestricted transfer of payments related to these investments, including:

- a. Income;
- b. Such as loans;
- c. The amounts to be used to cover expenses relating to the management of the investment;
- d. Royalties and other payments deriving from rights enumerated in article 2 (1) (2) (c), (d) and (e) of this Agreement;
- e. Additional capital necessary for the maintenance of the development or investment;
- f. The proceeds of the sale of or the partial or total liquidation of an investment capital gains, including possible;
- g. The earnings of natural persons.

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

Article 6. 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 except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the amount of compensation shall include interest, shall be paid in the currency of the country of origin of the investment and shall be paid without delay to the person entitled thereto without regard to its residence or its headquarters.

2. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with article 4, paragraph 2 of the present Agreement as regards restitution, indemnification, compensation or other settlement.

Article 7. Principle of Subrogation

Where a Contracting Party has provided any financial guarantee against non-commercial risks with 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 on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. With a view to finding an amicable solution of disputes between a Contracting Party and an investor of the other contracting party and without prejudice to article 9 of the present Agreement, consultations will take place between the parties concerned.
2. If these consultations do not resolve within six months of the request from the start, the investor may submit the dispute, at his choice for settlement, to:
 - a. The International Centre for the Settlement of Investment Disputes (ICSID, established by the Convention on the Settlement of Investment between diffé-rends etats¹ and nationals of other States, opened for signature at Washington on 18 March 1965; 1, opened for signature at Washington on 18 March 1965;
 - b. To an ad hoc arbitral tribunal which, unless otherwise agreed by the parties the diffé-rend, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. Each Contracting Party consents to the submission to international arbitration a dispute relating to an investment.
4. The Contracting Party which is a party to the dispute shall at no time excipera of settlement proceedings or enforcement of an award, on account of the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.
5. A company which is incorporated or constituted under the laws in force in the territory of a Contracting Party and which, before a dispute arises, was controlled by nationals or companies of the other Contracting Party, shall be treated as defined by the Washington Convention and in accordance with its article 25, paragraph 2 (b) As a company of the other contracting party.
6. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other contracting party does not comply with the award rendered by an arbitral tribunal.

Article 9. Disputes between Contracting Parties

1. Disputes between contracting parties relating to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
2. If both contracting parties fail to reach a settlement within six months from the date on which the dispute has arisen, the latter 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.
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 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.
4. 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.
5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out this 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, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.
6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.
7. Each Contracting Party shall bear the costs of the arbitrator it has appointed and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.
8. The decisions of the Tribunal are final and binding on the contracting parties.

Article 10. Other Commitments

1. If the provisions of the legislation of a Contracting Party or rules of International Law accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.
2. Each Contracting Party shall observe at all its obligations in respect of investments made in its territory by investors of the other contracting party.

Article 11. Final Provisions

1. 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; it shall remain valid for a period of ten years. if it is not denounced in writing six months before the expiry of this period, there shall be considered on the same terms as renewed for a period of two years, and so on.
2. In the event of termination, the provisions of articles 1 to 10 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.