Agreement between the Swiss Confederation and the Democratic Republic of the Sudan concerning the Encouragement and Reciprocal Protection of Investments

The Government of the Swiss Confederation and the Government of the Democratic Republic of the Sudan,
Bearing in mind the friendly relations existing between the two countries; desiring to strengthen and enhance linkages,

In order to create favourable conditions for investment in the two States and thereby enhancing cooperation between them in the areas of production, trade, tourism, technology and in any other areas of cooperation,

Recognizing that the promotion and protection of such investments of nationals and companies of each of the two States are conducive to the transfer of capital for economic prosperity of both countries;

Have agreed as follows:

Article 1.

For the purposes of this Convention:

1. the term "nationals" means:

Natural persons who, according to the laws of each Contracting Party, shall be treated as nationals of that State.

2. The term "companies" means: the term "companies" means:

The community foundations or institutions having legal personality or limited as well as partnerships and other communities of persons without legal personality in which nationals of either contracting party have a predominant interest, directly or indirectly.

3. The term "investment" means:

All categories of assets belonging to nationals or companies of each Contracting Party in accordance with its laws and established in particular, though not exclusively:

a) The movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits similar rights and rights;

b) The actions or other forms of equity participation;

c) Monetary claims or other forms of receivables from performance having an economic value, except the goodwill;

d) Property rights, copyrights, industrial processes, technical know-how, trademarks, trade names;

e) The concessions under public law, including concessions to search for and extract exploit natural resources.

4. The term "proceeds" means:

The amounts reported by an investment in the form of net profits and interest payments arising from or copyright.

Article 2.

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

Article 3.

Each Contracting Party shall protect investments within its territory by nationals or companies of the other Contracting Party and shall ensure fair and equitable treatment to such investments.

This treatment shall be at least equal to that granted by each contracting party to its own nationals or companies or to the treatment accorded to nationals or companies of the most favoured nation, if it is more favourable.

The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals and companies of a Third State because of its membership in, or association with, a customs union, a common market or a free trade area.

Article 4.

The contracting Parties do not alter or unjustified discriminatory measures by the management, maintenance, use, enjoyment, increasing and, where appropriate, the liquidation of such investments.

In particular, each Contracting Party shall promote investments in its territory and shall issue the necessary authorizations, including authorisations for the implementation of the agreements, technical assistance, commercial or administrative and employment of experts and other qualified persons of the other contracting party or of any third State.

However, either Contracting Party may deny entry and employment permits for security reasons.

Article 5.

Each Contracting Party shall guarantee to nationals or companies of the other contracting party as regards their investments, the transfer.

1. Returns as defined in article 1, paragraph 4;

2. Partial payments for repayment of loans;

3. The amounts spent for the management of the investment in the territory of the other contracting party or a third State;

4. Additional funds necessary for the maintenance and development of the investment;

5. Payments for technical assistance, commercial or administrative;

6. The proceeds of the partial or total liquidation of the investment, including possible capital gains.

Article 6.

Neither Contracting Party shall take any measures of expropriation, nationalization or dispossession, other direct or indirect, against investments of nationals or companies of the other contracting party unless the legal requirements are observed and that is made effective and adequate compensation.

The amount of compensation shall be set at the time of other expropriation, nationalization or dispossession. it shall be paid in the currency of the country of origin of the investment and shall be paid to the investor without undue delay.

Article 7.

If one of the Contracting Parties has granted a financial guarantee against any risks non-commerciaux relating to an investment made by a national or enterprise in the territory of the other contracting party, the latter shall recognize the subrogation of the guarantor of the Rights of the investor for the damage, if payment has been made under this guarantee to the extent of such payment and within the limits of the Rights of the investor.

Article 8.

This Convention shall also apply to investments of companies or nationals of either Contracting Party made before the entry into force of this Convention. however, it is understood that this agreement will not apply to investments belonging to nationals or companies of each of the Contracting Parties and which have been the subject of a measure of expropriation, nationalization or dispossession other.

Article 9.

The more favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with nationals or companies of the other Contracting Party shall not be affected by this Agreement.

Article 10.

The Contracting Parties shall endeavour to settle through negotiation any dispute concerning the interpretation or application of this Convention.

If no agreement can be reached, either Contracting Party may submit the dispute to an arbitral tribunal. the arbitral tribunal shall consist of three members. each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint a chairman who shall be a national of a third State. if one of the Contracting Parties has not appointed its arbitrator within two months following the date on which either Contracting Party has informed the other contracting party of its wish to submit the dispute to an arbitral tribunal, either Contracting Party may invite the President of the International Court of Justice to make the appointment. if the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after the date of the second designation, either Contracting Party may invite the President of the International Court of Justice to appoint the Chair.

If the President of the International Court of Justice is a national of either Contracting Party or is prevented from exercising his mandate, 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 is also prevented from discharging his mandate, the most senior member of the International Court of Justice who is not a national of either of the Contracting Parties and which is not prevented from exercising its mandate shall be invited to make the necessary appointments.

Unless the Contracting Parties decide otherwise, the arbitral tribunal shall determine its own procedure.

The arbitral tribunal shall reach its decisions by a majority of votes. the decisions shall be final and binding on the contracting parties.

Article 11.

The Contracting Parties have exchanged the attached Letter referring to Article 1, item 2, hereinbefore.

This Letter constitutes an integral part of the present Agreement.

Article 12.

This Convention is subject to ratification. the instruments of ratification shall be exchanged as soon as possible in Khartoum.

The Agreement shall enter into force on the date of the exchange of instruments of ratification. it shall be in force for a period of five years and unless one of the Contracting Parties denounces it shall remain valid for a period of five (5) years and so on.

If one of the contracting parties wishes to put an end to the Convention, it may do so by official notice in writing to the other contracting party six months before the expiration of each five-year period.

Termination of this Convention by a formal notification, the provisions of articles 1 to 11 above apply even for a period of ten years for investments made prior to the date of termination.

In WITNESS WHEREOF, the plenipotentiaries of the contracting parties have signed this Convention.

Done at Khartoum this day of 17th February 1974. In duplicate, in French and English, the English text being the authentic text.