Agreement between the Swiss Confederation and the Great Socialist People's Libyan Arab Jamahiriya on the Promotion and Reciprocal Protection of Investments

The Swiss Confederation and the Great Socialist Libyan Arab Jamahiriya's people
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.

For the purposes of this Agreement:

(1) The term investor refers with regard to 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 and other organizations, which are constituted or otherwise organised under the law 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 servitudes, charges, such as movable and immovable property, pledges, usufruits;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having economic value associated with an investment;

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

(e) The concessions under public law, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

(3) The term means the returns amounts derived from an investment includes, interests and profits, capital gains, dividends, royalties and fees.

(4) The term territory includes the maritime areas adjacent to the coastal State on sovereign rights or they may exercise jurisdiction in accordance with international law.

Article 2. Scope

This Agreement shall apply to investments made in the territory of a contracting party which are owned or controlled directly or indirectly by investors of the other contracting party. it shall apply to such investments made prior to or after its entry into force, but shall not apply to disputes arising out of events which occurred prior to that date.

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, in accordance with its laws and regulations, all licences and permits in connection with such investments, including those required for the performance of contracts, technical assistance, commercial or administrative, and for the activities of consultants and experts selected by the investor.

Article 4. Protection , Treatment

(1) Returns of investments and investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and security in the territory of the other contracting party. no Contracting Party shall in any way 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 to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, more favourable treatment to the investor concerned is crucial.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors to investors or of any third State, more favourable treatment to the investor concerned is crucial.

(4) 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 or common market 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 shall accord to investors of the other contracting party without delay the transfer in a freely convertible currency, amounts relating to their investments, including:

(a) Income;

(b) The amounts relating to loans for investment or other obligations;

(c) Proceeds from the sale or the total or partial liquidation of an investment including the appreciation thereof;

(d) The initial capital and additional contributions of capital necessary for the maintenance or development of the investment.

(2) Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment has been made.

(3) A transfer shall be deemed to have been made without delay if it has been effected within the period normally required for the completion of formalities transfer.

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 compensation shall amount to the market value of the expropriated investment immediately before the expropriation was taken or they are known to the public, the first of those events in determining. the amount of compensation shall include interest, shall be settled in a freely convertible currency and 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 of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 7. Subrogation

Where a Contracting Party has provided any financial guarantee against non-commercial risks 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) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party in respect of an obligation under this Agreement, consultations will take place between the parties concerned.

(2) If these consultations do not solution within six months from the date of the written request, to initiate the investor may either submit the dispute to the competent courts or administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. in the latter case, the investor shall have the choice between:

(a) The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment diffé-rends etats1 between nationals of other States and opened for signature at Washington on 18 March 1965, when both parties are contracting parties to the Convention; and1 opened for signature at Washington on 18 March 1965, when both parties are contracting parties to the Convention; and

(b) An ad hoc arbitral tribunal which unless the parties to the dispute decide otherwise, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party gives its consent to the submission to the arbitration any dispute concerning an investment.

(3) The Contracting Party which is a party to the dispute may, at any stage of the proceedings, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the loss or damage sustained.

(4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other contracting party does not comply with the arbitral award.

(5) The arbitral award shall be final and binding upon the parties to the dispute and shall be executed without delay according to the legislation of the Contracting Party concerned.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If the dispute between the contracting parties cannot be settled within six months from the time at which it was raised in writing by either contracting party, it shall be submitted, at the request of either party to the dispute to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case in the following way. within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal and the two members shall within two months shall select a national of a third State, who shall be the Chairman of the Tribunal.

(4) If the necessary appointments have not been made within the periods specified in paragraph (3) of this article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make such appointments. if the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from exercising this 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 for any other reason, it is also prevented from exercising this function, the most senior member of the Court who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own rules of procedure. it shall reach its decisions by a majority of votes. the decisions of the Tribunal shall be final and binding on the contracting parties.

(6) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the

proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

Article 10. More Favourable Provisions

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.

Article 11. Other Commitments

Each Contracting Party shall comply with all its obligations in respect of investments made in its territory by investors of the other contracting party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the day on which the two States have notified each other that the legal requirements for the entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced with six months notice in writing before the expiry of this period, it 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 11 of this Agreement shall continue to apply for a further period of ten years for investments made prior to the termination of the Agreement.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.