

# **Agreement between the Swiss Federal Council and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments**

## **Preamble**

The Swiss Federal Council and the Government of the Republic of Azerbaijan, (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 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 purpose of this Agreement:

(1) The term "investment" refers to any kind of asset and any rights connected thereto pursuant to applicable law, and includes in particular, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, pledges and usufructs;

(b) Shares, parts or any other kind of participation in companies;

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

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

(e) Any right conferred by law, by contract or by virtue of any licences and permits granted pursuant to law to undertake an economic activity, including to search for, extract or exploit natural resources. .

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

(a) Natural persons having the nationality of that Contracting Party;

(b) Legal persons constituted under the law of that Contracting Party.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalty payments, management, technical assistance or other fees, and payments in kind.

(4) The term "territory" means:

(a) In respect of the Swiss Confederation: the territory in which the Swiss Confederation exercises, in accordance with national and international law, sovereign rights and jurisdiction;

(b) In respect of the Republic of Azerbaijan: the territory of the Republic of Azerbaijan, including the respective Caspian Sea sector over which the Republic of Azerbaijan exercises, in accordance with national legislation and international law, sovereign rights and jurisdiction.

## **Article 2. Scope**

The present Agreement shall apply to investments in the territory of one Contracting Party that are owned or controlled, directly or indirectly, by investors of the other Contracting Party. It also applies to investments that were made prior to the entry into force of the Agreement, however not to disputes relating to facts which occurred before that date.

## **Article 3. Encouragement and 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) Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.

## **Article 4. Protection and Treatment**

(1) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

(2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

(3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

## **Article 5. Transfers**

(1) Each Contracting Party shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- (a) Returns;
- (b) Payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
- (c) Proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
- (d) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
- (e) The initial capital and additional amounts to maintain or increase the investment.

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

## **Article 6. Dispossession , Compensation**

(1) Neither of the Contracting Parties shall take, either 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 in the public interest, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of compensation, interest included, shall be settled in a freely convertible currency and 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 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

## **Article 7. Principle of 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 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, 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 consultations, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice between either of the following:

(a) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(b) The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965.

(3) Both Contracting Parties declare their consent to submit the dispute to arbitration in accordance with paragraph (2) above.

(4) A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which before a dispute arises was under the control of investors of the other Contracting Party, shall in accordance with Article 25 (2) (b) of the Convention of Washington, be treated as a company of the other Contracting Party.

(5) The Contracting Party which is a party to the dispute shall no, at any time during the procedures assert 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 damage or loss incurred.

(6) 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 arbitral award.

(7) The arbitral award shall be final and binding on the parties to the dispute and shall be executed according to national law.

## **Article 9. Disputes between the Contracting Parties**

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

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint an 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 such 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 is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or 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 10. Other Commitments**

(1) If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party

## **Article 11. Final Provisions**

(1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that they have complied with the legal requirements for the entry into force of international agreements.

(2) This Agreement 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.

(3) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in Duplicate, at Baku on 23 February 2006, each in the Azerbaijani, French and English languages, each text being equally authentic. In case of any divergence, the English text shall prevail.

For the Swiss Federal Council (signature)

For the Government of the Republic of Azerbaijan (signature)