

# Agreement between the Swiss Confederation and Georgia on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Confederation, and Georgia (hereinafter referred to as the contracting parties",

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 and sustainable development of the two States,

Convinced that these objectives can be achieved without reducing the standards of general application relating to health, safety, labour and the environment;

Affirming the mutual support policies relating to investment, environmental and labour in this regard;

Reaffirming their commitment to democracy and the rule of law, respect for human rights and fundamental freedoms in accordance with their obligations under international law,

Determined to encourage investors to the standards and principles of corporate social responsibility internationally recognized,

Reaffirming their commitment to the prevention and combating of corruption in international investments,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" means 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, capital companies, corporations and other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with substantial business activities in the territory of that same Contracting Party;

(c) Legal persons who are not established in accordance with the laws of that Contracting Party but which are effectively controlled by natural persons as defined in subparagraph (a) above or by legal persons within the meaning of subparagraph (b) above.

(2) The term investment means every kind of tangible or intangible assets invested in the territory of a Contracting Party by investors of the other Contracting Party in accordance with the legislation of the first Contracting Party and shall include, 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, with the exception of receivables arising solely

from commercial contracts for the sale of goods and services;

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

(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.

To qualify as investments for the purposes of this Agreement, the assets must have the characteristics of an investment, including the commitment of capital or other resources in the context of an income or profits, and the assumption of risk.

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

(4) The term "territory" means:

- In respect of Georgia:

The territory of Georgia within its internationally recognised borders of State, including the land territory, internal waters and the territorial sea and the airspace above those waters, as well as the contiguous zone and the exclusive economic zone and the continental shelf adjacent to its territorial sea over which Georgia may exercise its sovereign rights in accordance with international law;

- With respect to the Swiss Confederation:

The territory of Switzerland as specified in its laws in accordance with international law.

## **Article 2. Scope**

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its legislation by investors of the other contracting party, before or after its entry into force. It shall not, however, apply to claims or disputes arising out of events which occurred prior to its entry into force.

## **Article 3. Promotion, Admission**

(1) Each Contracting Party shall promote investments of investors of the other contracting party in its territory, including through the exchange of information between the Contracting Parties on investment opportunities and admits such investments in accordance with its legislation.

(2) Each Contracting Party shall facilitate, in accordance with its laws, the necessary permits in connection with an investment, including the possible to implement licensing contracts, technical assistance, commercial or administrative, as well as the required authorisations for the activities of consultants and experts.

(3) The Contracting Parties recognize that it is inappropriate to weaken or reduce the levels of protection provided by its laws, regulations and standards for health, safety, labour and environment for the sole purpose of encouraging investments. Therefore, a contracting party or otherwise does not derogate from or offer to waive or otherwise derogate from such laws, regulations and standards in order to encourage investment of an investor of the other contracting party.

## **Article 4. Protection, Treatment**

(1) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other contracting party. No Contracting Party shall in any way interfere with unjustified or discriminatory actions in the management, maintenance, use, enjoyment, increased or disposal of such investments.

(2) Each Contracting Party shall accord in its territory to investments of investors of the other contracting party treatment no less favourable than that which it accords to its own investments of investors or to investments of 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.

(5) It is understood that the most-favoured-nation treatment referred to in paragraph (2) and (3) shall not apply to mechanisms for the Settlement of Investment Disputes under this Agreement or by other international agreements concluded by the Contracting Party concerned.

## **Article 5. Free Transfer**

(1) Each Contracting Party in whose territory of investors of the other Contracting Party has made investments shall without delay to those investors the free transfer of payments related to these investments, in particular:

(a) Income;

(b) Such as loans;

(c) The amounts intended to cover expenses relating to the management of the investment;

(d) Royalties and other payments deriving from rights enumerated in article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance of the development or investment;

(f) The proceeds of the sale of or the partial or total liquidation of the investment, including possible capital gains.

(2) In order to remove any ambiguity, it is confirmed that a Contracting Party may delay or prevent a transfer through the equitable and non-discriminatory and in good faith measures related to tax any obligation to the protection of the rights of creditors or compliance with judicial or administrative decisions.

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

(1) Neither Contracting Party shall, 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 be equivalent 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, including interest at a normal commercial rate 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) 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. Principle of Subrogation**

If an investor of a Contracting Party receives payment, pursuant to an insurance contract against non-commercial risks, from an insurer constituted or organised under the law of that Contracting Party, the other Contracting Party shall recognize the assignment of any right or claim of the investor to the insurer, and the right of the insurer to exercise such right or claim by virtue of subrogation to the same extent as the predecessor in title.

## **Article 8. Denial of Benefits**

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a juridical person of such other Contracting Party and to its juridical investments if the person has no substantial business activities in the territory of the other contracting party and is owned or controlled by natural persons or juridical persons of a third country or the contracting party denies benefits.

## **Article 9. Right to Regulate**

(1) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining or enforcing any measure that is consistent with this Agreement in the public interest, such as measures relating to health, safety, environmental or labour or reasonable prudential measures.

(2) Such measures may be adopted, maintained or applied provided that such measures are not applied in an arbitrary or unjustifiable and do not constitute a disguised restriction on investments of investors of the other contracting party.

## **Article 10. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) Disputes between a Contracting Party and an investor of the other contracting party relating to an investment of the latter in the territory of the former which relate to an alleged breach of this Agreement causing loss or damage to the investor of the other Contracting Party shall be settled amicably, as far as possible through consultations.

(2) If these consultations do not solution within six months from the date of the written request, to initiate the investor may submit the dispute to the 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 has the choice between:

(a) 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 18 March 1965 (hereinafter referred to as the Washington Convention "); and

(b) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) The UNCITRAL Rules on Transparency in the arbitration between investors and States based on the treaties shall apply to the settlement of disputes between a Contracting Party and an investor of the other Contracting Party referred to in paragraph (2), letter (a) and (b) of this article.

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

(5) Any dispute concerning an investment may be submitted to international arbitration in accordance with paragraph (2), letter (a) or (b) of this article if more than five years have elapsed since the date the investor had knowledge or should have had knowledge of the alleged breach and the loss or damage allegedly caused by the latter.

(6) A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and which, before a dispute arises, was controlled by investors of the other Contracting Party, shall be treated in accordance with article 25, paragraph (2), letter (b) of the Washington Convention, as a company of the other Contracting Party.

(7) 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 damage incurred.

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

(9) 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 11. 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 both contracting parties fail to reach a settlement within six months from the date of birth of the dispute between themselves, 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 one arbitrator and the two arbitrators thus appointed 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 paragraph (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, 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 arbitral tribunal shall determine its own rules of procedure. It shall make its decision by a majority of votes. Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties unless the tribunal decides otherwise.

(7) The decisions of the Tribunal are final and binding on the Contracting Parties.

## **Article 12. Other Commitments**

(1) If the provisions of law of either Contracting Party or international obligations which are applicable between the Contracting Parties to accord investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement and such obligations, such rules shall prevail over this agreement to the extent that they are more favourable.

(2) Each Contracting Party shall comply with all the obligations assumed by it in the exercise of its sovereign authority in respect of an investment in its territory by investors of the other contracting party and to which the investor could rely in good faith through amending or investment.

## **Article 13. Modifications and Amendments**

The Contracting Parties may, by mutual consent, done at any time modifications or amendments to this Agreement. Such modifications or amendments shall enter into force in accordance with article 14, paragraph (1) of this Agreement.

## **Article 14. Final Provisions**

(1) The Contracting Parties shall notify each other through diplomatic channels that the legal requirements for the entry into force of this Agreement have been completed.

(2) This Agreement shall enter into force on the date of receipt of the last written notification pursuant to paragraph (1) and the rest for a period of ten years. Thereafter it shall be automatically renewed for successive periods of two years unless either Contracting Party may denounce it in writing with six months notice before the expiry of the initial or any subsequent period.

(3) In case of official notice of denunciation of this Agreement, the provisions of articles 1 to 11 shall continue to apply for a further period of ten years for investments made before the expiry of the Agreement.

Done at Tbilisi, on 3 June 2014, each in two originals in English, Georgian and English languages, all texts being equally authentic. in case of divergence of interpretation, the English text shall prevail.

For the Swiss Confederation:

Didier Burkhalter

For Georgia:

Irakli Gharibashvili

Protocol

Under the agreement between the Swiss Confederation and Georgia on the Promotion and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have agreed on the following provisions.

**Article Ad 7 and 10, paragraph (7).**

It is understood that such provisions shall not authorize double compensation to the investor.

**Article Ad 10, paragraph (7).**

It is understood that the reference to immunity means immunity from jurisdiction.

For the Swiss Confederation:

Didier Burkhalter

For Georgia:

Irakli Gharibashvili