

Agreement Between The Swiss Confederation And The Arab Republic of Egypt on the Promotion and Reciprocal Protection Of Investments

Preamble

The Swiss Federal Council and The Government of the Arab Republic of Egypt,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by 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 and sustainable development of both States,

Convinced that these objectives can be achieved without relaxing health, safety and environmental standards of general application,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investment" shall include every kind of asset that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including, though not exclusively:

(a) Movable and immovable property as well as any other rights in rent, such as servitudes, mortgages, liens, 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, except claims arising solely out of commercial contracts for the sale of goods or services or from credits in relation to a commercial transaction of which the original maturity date is less than three years;

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

(e) Concessions, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

A change in the form in which an investment has been made does not affect its character as investment pursuant to the Agreement.

(2) The term "investor" refers, with regard to either Contracting Party, to any natural person or any legal entity that has made an investment in the territory of the other Contracting Party and is defined as follows:

(a) A natural person who, according to the law of that Contracting Party, is considered to be its national. This shall not include a natural person that holds the nationality of both Contracting Parties.

(b) A legal entity, including:

i. companies, corporations, business associations and other organisations, which are constituted or otherwise duly

organised under the law of that Contracting Party and have their statutory seat, together with real economic activities, in the territory of the same Contracting Party;

ii. - a legal entity not established under the law of that Contracting Party but effectively controlled by natural persons as defined in (a) above or by legal entities as defined in (i) above.

Control over the legal entity will be established if the investor has the power to name a majority of its directors or otherwise to legally direct its actions. With respect to Egypt, control over a legal entity requires additionally that the investor has to be a shareholder of this legal entity.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.

(4) The term "territory" means the territory of either Contracting Party as defined by the laws of the Contracting Party concerned in accordance with international law.

Article 2. Scope of Application

(1) The present Agreement shall apply to investments in the territory of one Contracting Party made by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. The Agreement shall not apply to claims or disputes arising out of events which occurred prior to the entry into force of this Agreement.

(2) Regarding taxation, the Agreement for the avoidance of double taxation between the Contracting Parties shall prevail over this Agreement to the extent of inconsistency.

Article 3. Promotion, Facilitation and Admission

(1) Each Contracting Party shall in its territory promote and facilitate as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall provide, in accordance with its laws and regulations, all necessary permits or authorizations in connection with such 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 managerial and technical personnel of the investors choice.

(3) In order to increase investment flows, the Contracting Parties shall co-operate as set out in Chapter IV, Article 25 of the Free Trade Agreement between the Arab Republic of Egypt and the EFTA States.

Article 4. Protection, Treatment

(1) Investments and returns of 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. 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 and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and 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) This treatment shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Party in a custom union, common market, free trade zone or a regional arrangement of similar nature or by virtue of an agreement relating to avoidance of double taxation.

(5) It is understood that the most favourable treatment referred to in this Article does not encompass mechanisms for the settlement of investment disputes provided for in other international agreements related to investments concluded by the Contracting Party concerned.

Article 5. Free Transfer

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer without restriction or delay in a freely convertible currency of the amounts relating to such investments, in particular of:

- (a) Returns;
 - (b) Payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
 - (c) Amounts assigned to cover expenses relating to the management of the investment;
 - (d) Royalties and other payments deriving from rights enumerated in Article 1, paragraph (1), letters (c), (d) and (e) of this Agreement;
 - (e) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
 - (f) Payments arising from compensation payable under Articles 6 and 7 of this Agreement;
 - (g) The initial capital and additional amounts to maintain or increase the investment;
 - (h) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values.
- (2) A transfer shall be deemed to have been made without delay if effected within such a period as is normally required for the completion of transfer formalities. Such period shall in no case exceed three months.
- (3) Unless otherwise agreed with the investor, 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.
- (4) Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy to any one of the Contracting Parties, the Contracting Party concerned may take safeguard measures with regard to capital movements that are strictly necessary, for a period not exceeding six months, provided that these measures are consistent with its commitments under the Agreement of the International Monetary Fund. The application of safeguard measures may be extended through their formal reintroduction.

The Contracting Party adopting the safeguard measures shall inform the other Contracting Party, and present, as soon as possible, a time scheduled for their removal.

In addition, these safeguard measures shall:

- i. be non-discriminatory;
- ii. avoid unnecessary damage to the economic and financial interests of the other Contracting Party;
- iii. not exceed those necessary to deal with the circumstances described above; and
- iv. be temporary and be phased out progressively as the situation specified above improves.

Article 6. Expropriation, Compensation

(1) Neither of the Contracting Parties shall take 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 prompt, 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 publicly known, whichever is earlier.

(2) The amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment.

(3) The compensation shall be settled in a freely convertible currency, be paid without delay and be freely transferable.

(4) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Contracting Party of his case and of the valuation of his investment in accordance with the principles set out in this Article.

(5) Where a Contracting Party expropriates the assets of a legal entity which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall, to the extent

necessary and subject to its laws, ensure, that compensation according to paragraph (1) of this Article will be made available to such investors.

(6) The provisions of this Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreements.

Article 7. Compensation for Losses

The investors of one Contracting Party whose investments have suffered losses due to war or to any other armed conflict, revolution, state of emergency, rebellion, civil disturbance, or any other similar event 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 8. Other Obligations

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

Article 9. More Favourable Provisions

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

Article 10. Security Exceptions

Subject to the requirement that such measures are not applied in an arbitrary or discriminatory manner or constitute a disguised restriction on investors and investments, nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfill its obligations with respect to the protection of its essential security interests.

Article 11. Principle of Subrogation

If an investor of a Contracting Party receives payment, pursuant to an insurance, guarantee or indemnity contract, from an insurer constituted or organised under the law of that Contracting Party, the other Contracting Party shall recognise 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 entitled. To the extent that the investor has received payment and therefore the insurer has entered into his rights, the investor shall not be able to make a claim based on these rights.

Article 12. 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 concern an alleged breach of this Agreement (hereinafter referred to as investment dispute) shall, without prejudice to Article 13 of this Agreement (Disputes between the Contracting Parties), to the extent possible, be settled through consultation, negotiation or mediation (hereinafter referred to procedure of amicable settlement).

(2) Before submitting an investment dispute for settlement in accordance with paragraph (3), the investor shall in addition to paragraph (1) submit the dispute to the domestic administrative procedure of the Contracting Party in whose territory the investment has been made (hereinafter referred to as disputing Party). The investor may submit the investment dispute to the domestic administrative procedure in parallel or in conjunction with the procedure of amicable settlement referred to in paragraph (1). The two procedures shall in no case exceed six months from the date of the written request for consultation, negotiation or mediation submitted by the investor,

(3) If within six months the investment dispute cannot be settled through the procedure of amicable settlement and the investor is not satisfied with the outcome of the domestic administrative procedure, the investor may submit the dispute

either to:

- The courts of the Contracting Party in whose territory the investment has been made;
- The Cairo Regional Centre for International Commercial Arbitration;
- An ad hoc arbitral tribunal which, unless otherwise agreed upon by the disputing parties, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- The International Centre for Settlement of Investment Disputes (ICSID) provided for 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.

(4) Each Contracting Party hereby gives its unconditional and irrevocable consent to the submission of an investment dispute to international arbitration in accordance with paragraph (3) above. However, in the case where the investor and the disputing Party have signed an investment contract, the procedure relating to the settlement of disputes foreseen in that contract shall apply to the settlement of disputes arising from the breach of said contract. It is understood that this is without prejudice to the settlement of investment disputes arising from the breach of this Agreement.

(5) No claim may be submitted by the investor to either a national court or to arbitration if more than five years have elapsed from the date on which the investor acquired, or should have first acquired, knowledge of the breach of this Agreement and knowledge of the loss or damage arising from that breach.

(6) Once the investor has submitted the investment dispute to one of the fora referred to in paragraph (3), that election is final.

(7) Unless the disputing parties agree otherwise, the arbitral tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the Chairman, appointed by agreement of the disputing parties. In case the arbitral tribunal has not been constituted within 3 months from the date of submission of the request for arbitration, the Secretary General of ICSID, upon request of either disputing party, shall appoint the arbitrator or arbitrators not yet appointed.

(8) The arbitral tribunal shall settle the dispute in accordance with the provisions

(9) Of the Agreement and applicable rules and principles of international law.

The arbitral tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

The tribunal may also award costs and attorneys fees in accordance with the applicable arbitration rules.

(10) The arbitral award shall be final and binding for the disputing parties and shall be executed without delay according to the law of the Contracting Party concerned.

Article 13. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall, to the extent possible, 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 of three members. Each Contracting Party shall appoint one 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 that 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 own procedure. Each Contracting Party shall bear the cost 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 arbitral tribunal decides otherwise.

(7) The tribunal shall settle the dispute in accordance with the provisions of the Agreement and applicable rules and principles of international law. The decisions of the tribunal are final and binding for each Contracting Party.

Article 14. Final Provisions

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

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years for investments made before the termination.

(3) This Agreement replaces the Agreement between the two Contracting Parties concerning the Encouragement and Reciprocal Protection of Investments, signed in Cairo on 25th July 1973.

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

Done in duplicate, at Cairo, on 7 June 2010, in French, Arabic and English language, each text being equally authentic. In case of divergences the English text shall prevail.

For the Swiss Federal Council

For the Government of the Arab Republic of Egypt