

Agreement between the Swiss Confederation and the Kingdom of Cambodia

The Swiss Federal Council and the Government of the Kingdom of Cambodia,

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,

Recognising 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

(1) The term "Investor" refers with regard to either Contracting Party to

(a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) legal entities which are constituted or otherwise organised under the law of that Contracting Party and are engaged in substantive business operations in that Contracting Party;

(c) legal entities not established under the law of that Contracting Party

i) in which more than 50 per cent of the equity interest is owned by natural persons or legal entities of that Contracting Party; or

ii) in relation to which natural persons or legal entities of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.

(2) The term "Investments" shall include every kind of asset in particular:

(a) movable and immovable property as well as any other rights in rem, 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 under contract having an economic value;

(d) 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 under public law, 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.

(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" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2. Scope

The present Agreement shall apply to Investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement.

Article 3. Promotion, 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) When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorisations concerning the activities of consultants and other qualified persons of foreign nationality

Article 4. Treatment of Investment

(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. Free Transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the amounts relating to these investments, in particular of:

- (a) returns;
- (b) funds to repay loans contracted or to meet other contractual obligations;
- (c) the proceeds of the partial or total sale or liquidation of the Investment, including possible increment values.

(2) In circumstances of exceptional balance of payments difficulties a Contracting Party shall have the right to limit transfers mentioned in paragraph (1), letter c) of this Article. In such cases transfers shall be allowed in three equal yearly instalments.

Article 6. Dispossession, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation 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 the currency of the country of origin of the investment 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) With a view to an amicable settlement of disputes between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within six months from the date of request for consultations, the investor shall be entitled to submit the dispute either to:

(a) the International Center for Settlement of Investment Disputes (ICSID) instituted 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, as soon as the Kingdom of Cambodia becomes a Party to this Convention; or to

(b) 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); the parties to the dispute may also agree on a sole arbitrator.

(3) The Contracting Party which is party to the dispute shall, at no time whatsoever during the settlement procedure or the execution of the sentence, allege the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(4) 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 award rendered by such arbitral tribunal.

Article 9. Disputes between Contracting Parties

(1) Disputes between 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 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 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 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 présent Agreement by either Contracting Party, 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.

Done in duplicate, at Phnom Penh on October 12, 1996, each in French, Khmer and English, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council

For the Government of the Kingdom of Cambodia