

Agreement between the Republic of Slovenia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council

And

The Republic of Slovenia,

(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 of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

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

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

(b) Any legal person which is constituted or otherwise organised under the law of that Contracting Party and is engaged in substantive business activities in the territory of that Contracting Party;

(c) Any legal person who is not established in accordance with the law of that Contracting Party; if more than 50 per cent of the equity capital belongs either owned by persons of that Contracting Party; or when persons of that Contracting Party has the power to name a majority of its directors or otherwise legally authorized its direct opérations. if more than 50 per cent of the equity capital belongs either owned by persons of that Contracting Party; or when persons of that Contracting Party has the power to name a majority of its directors or otherwise entitled by law to direct its actions.

(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;

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

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

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

(e) The concessions, 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 derived from an investment amounts and includes in particular, though not exclusively,

interests, capital gains, profits, 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. Implementation

(1) This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party prior to or after its entry into force.

(2) Investors referred to in article 1 (1), (c), may not assert claims under this Agreement if, in the same case, they have already been invoked the provisions of an investment protection agreement.

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 the necessary permits in connection with such investments and with the carrying out of licensing agreements, technical, commercial or administrative assistance. each Contracting Party shall endeavour to issue, whenever necessary, the required authorisations for the activities of consultants and other qualified persons of foreign nationality.

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 protection and security in the territory of the other contracting party.

(2) No Contracting Party shall in its territory to investments of investors of the other Contracting Party, returns or investments related to their treatment no less favourable than that which it accords to its own investments of investors or to investments of investors of any third State, or the revenue associated with such investments.

(3) No Contracting Party shall in its territory for investors 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.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a Free Trade Area (libreéchange, customs union or common market, an agreement with a view to facilitating cross-border trade, 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 guarantee to investors of the other contracting party without delay the transfer in a freely convertible currency of the amounts relating to an investment, including:

(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 (2), letter (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 an investment including the appreciation thereof;

(g) The compensation referred to in article 6 of this Agreement.

(2) A transfer shall be considered to have been made without delay if it takes place within the period normally required for the completion of formalities transfer. the said period shall commence on the day on which the relevant request; it shall in no case exceed two months.

Article 6. Dispossession , Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation or 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 amount of compensation shall include interest, shall be settled in a freely convertible currency agreed to by the investor and shall be 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. Additional Obligations

(1) If the legislation of either Contracting Party shall accord to investments of investors of the other contracting party to more favourable treatment than that provided for by the present Agreement, the latter shall prevail to the extent that it is more favourable.

(2) 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 8. Principle of 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 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) With a view to finding an amicable settlement of 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.

(2) If these consultations do not solution within six months from the date on which the request for settlement, the investor may submit the dispute to:

(a) The International Centre for the 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 (1) (hereinafter referred to as the Convention "")); or

(b) To 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 International Trade Law (UNCITRAL).

(3) Each Contracting Party consents to submit a dispute relating to an investment to an international arbitral tribunal or an international body to conciliation.

(4) 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.

(5) A company which is incorporated or constituted under the laws in force in the territory of a 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 (2) (b) of the Convention, as a company of the other contracting party.

(6) 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.

Article 10. Disputes between Contracting Parties

- (1) Disputes between 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 12 months from the date on which the dispute has arisen, 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 an arbitrator. the two arbitrators so nominated shall appoint a chairman who is a national of a third State.
- (3) If one of the Contracting Parties has not appointed its arbitrator or to respond to 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 under paragraphs (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 res-sortissant of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented from exercising this function or if he is a national of either Contracting Party, such a decision will be made by 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 tribunal shall determine its own rules of procedure.
- (7) The decisions of the Tribunal shall be final and binding on the contracting parties.

Article 11. Final Provisions

- (1) This Agreement shall enter into force on the day on which the two Contracting Parties shall have notified each other that the legal requirements for its entry into force 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 successive periods of five years.
- (2) In the event of termination, the provisions of articles 1 to 10 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 respective Plenipotentiaries have signed this Agreement.

Done in two originals in Ljubljana, on 9 November 1995, each in Slovenian and German and English languages, all texts being equally authentic. in the event of any inconsistency, the English text shall prevail.