

Of 26 June 1998

Enter into force by exchange of notes on 13 April 2000

On 27 February 2001 (State)

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term investor refers 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 registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;
- (c) Legal entities which are not established in accordance with the laws of that Contracting Party but which are effectively controlled by natural persons or legal entities, respectively in accordance with subparagraph (a) and (b) of this paragraph.

(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, usufruits;
- (b) The actions, and other forms of participation shares in companies;
- (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 amounts derived from an investment includes, interests and profits, capital gains, 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. Scope**

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, before or after its entry into force.

## **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) Returns of investments and 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 of the contracting parties will not in any way, unjustified or discriminatory measures by the management, maintenance, use, enjoyment, increased or disposal of such investments.

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

## **Article 5. Free Transfer**

Each Contracting Party in whose territory of investors of the other Contracting Party has made investments will accord to those investors the free transfer of payments related to these investments, including:

- (a) Income;
- (b) Such as loans;
- (c) The amounts to be used to cover expenses relating to the management of the investment;
- (d) Royalties and other payments deriving from rights enumerated in article 1, paragraph (2), let. (C), (d) and (e) of this Agreement;
- (e) Additional contributions of capital necessary for the maintenance or development of the investments;
- (f) Proceeds from the sale or the total or partial liquidation of an investment including capital gains.

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

(1) Neither Contracting Party shall take, 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 amount to the market value of the expropriated investment immediately before the expropriation is taken or they are known to the public, the first of those facts are crucial. the amount of compensation shall include interest, shall be paid 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 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. Principle of Subrogation**

Where a Contracting Party has provided any financial guarantee against non-commercial risks with 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 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 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 and without préjudice of article 9 of this Agreement (disputes between contracting parties), consultations will take place between the parties concerned.

(2) If these consultations do not resolve within six months of the request from the start, and if the investor concerned consents in writing, the dispute shall be submitted to the International Centre for Settlement of Investment diffé-rends) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other etats<sup>1.1</sup>.

Each party may institute proceedings by addressing a request to that effect to the Secretary General of the Centre as provided for in article 28 and 36 of the Convention. where the parties disagree on whether conciliation or arbitration is the most appropriate procedure, the choice of the investor concerned. the Contracting Party which is a party to the dispute may, at any stage of the proceedings or enforcement of an award an examination of the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(3) A company which is incorporated or constituted under the laws in force in the territory of a Contracting Party and which, before the birth of diffé-rend, was controlled by investors of the other Contracting Party, shall be treated as defined by the Washington Convention and in accordance with its article 25 (2) (b), as a company of the other contracting party.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless

(a) The Secretary-General of the Centre or a conciliation commission or an arbitral tribunal decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other contracting party does not comply with the arbitral award.

## **Article 9. 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 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 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 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 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, they 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 procedure.

(7) The decisions of the Tribunal are final and binding on the contracting parties.

## **Article 10. Other Commitments**

(1) If the provisions of the legislation of a Contracting Party or rules of International Law accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.

(2) Each Contracting Party shall observe at all its obligations in respect of investments made in its territory by investors of the other contracting party.

## **Article 11. Final Provisions**

(1) This Agreement shall enter into force on the day on which the two Governments have notified each other that the legal requirements for the entry into force of international agreements 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 a period of two years, and so on.

(2) In the event of termination, the provisions of articles 1 to 10 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.

The Swiss Federal Council and the Government of the Republic of Botswana,

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: