

AGREEMENT BETWEEN THE ARGENTINE REPUBLIC AND THE SWISS CONFEDERATION FOR THE PROMOTION AND PROTECTION OF RECIPROCAL INVESTMENTS

PREAMBLE

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

Wishing to intensify economic cooperation in the mutual interest of both States,

With the intention of creating and maintaining favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to encourage and protect foreign investment in order to promote the economic prosperity of the two States

Have agreed on the following:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investor" means, in respect of each Contracting Party

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

(b) legal entities, including companies, registered companies, partnerships or other organisations, formed or otherwise organised under the law of that Contracting Party and having their registered office and being engaged in real economic activities in the territory of that Contracting Party.

(c) legal entities established under the law of any country which are effectively controlled by nationals of that Contracting Party or by legal entities which have their seat, as well as real economic activities, in the territory of that Contracting Party.

(2) The term "investments" means all categories of assets and any direct or indirect contribution in money, rights, kind or services, provided that the investment has been made in accordance with the laws and regulations of the respective Contracting Party, and in particular

(a) the ownership of property, movable and immovable, as well as all other rights in rem, such as easements, charges on buildings, mortgages and pledges

(b) shares, company quotas and other forms of participation in companies;

(c) monetary claims and rights to any benefits of economic value;

(d) copyright, industrial property rights (such as patents, utility models, industrial designs, trademarks, service marks, trade names, indications of origin), knowledge transfers and goodwill;

(e) concessions, including concessions for the exploration, extraction or exploitation of natural resources, as well as any other rights conferred by law, contract or decision of the enforcement authority.

(3) The term "territory" includes adjacent maritime areas in which the coastal state may exercise sovereignty or jurisdiction in accordance with international law.

Article 2. Promotion, Admission

(1) Each Contracting Party shall promote in its territory, to the extent possible, investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) The Contracting Party which has admitted an investment in its territory shall, in accordance with its laws and regulations, grant such authorizations as may be necessary in connection with that investment, including the execution of licensing, technical assistance, commercial or administrative contracts. Each Contracting Party shall, where necessary, grant the required authorizations in respect of the activities of consultants or other qualified persons of foreign nationality.

Article 3. Protection and Non-discrimination

(1) Each Contracting Party shall protect investments made in its territory in accordance with its laws and regulations by investors of the other Contracting Party and shall not obstruct by unjustified or discriminatory measures the management, maintenance, use, enjoyment, enhancement, sale or liquidation of such investments. In particular, each Contracting Party shall grant the authorizations referred to in Article 2 (2) of this Convention.

Treatment

(2) Each Contracting Party shall ensure fair and equitable treatment of investments made in its territory by investors of the other Contracting Party. Such treatment shall not be less favourable than that accorded by each Contracting Party to investments made in its territory by its own investors or than that accorded by each Contracting Party to investments made in its territory by most-favoured-nation investors, where the latter treatment is more favourable.

Economic integration zone

(3) Most-favoured-nation treatment shall not apply to privileges accorded by a Contracting Party to investors of a third State by virtue of its participation in or association with a free trade area, customs union or other zones of economic integration.

Double taxation

(4) The most-favoured-nation treatment will not apply to advantages which a Contracting Party grants to investors of a third State under a convention for the avoidance of double taxation or under other conventions concluded in the field of taxation on a reciprocal basis.

Article 4. Free Transfer

(1) Each Contracting Party in whose territory investors of the other Contracting Party have made investments shall grant to such investors the free transfer of payments in connection with such investments, including complementary investments, particularly of the following:

- (a) interest, profits, dividends and other earnings normally derived from the investments;
- (b) the amounts derived from the rights listed in Article 1(2)(d) of this Convention;
- (c) proceeds from the sale or disposal of all or any part of the investment, including any capital gains.

(2) The free transfer shall take place in accordance with procedures established by each Contracting Party, which shall in no way affect the nature or exercise of this right, for example through unjustified delay.

(3) Each Contracting Party retains the right, in the event of exceptional balance of payments difficulties, to subject the free transfer, on an equitable and non-discriminatory basis and in accordance with its international obligations, to the following modalities:

(a) As regards the transfer of the amounts referred to in paragraph (1) of this Article, transfers may be staggered over periods not exceeding 18 months within a maximum period of 36 months; however, the transfer of at least fifty percent of such amounts shall be authorized at the end of the first year. In no case may a further instalment be imposed on the same investor during the three years following the end of the instalment period.

(b) An investor subject to staggering shall be authorised to invest the amounts to be transferred in such a way that their actual value is preserved.

(c) Notwithstanding any staggering measures referred to in sub-paragraph (a), the investor shall have the right to use at any time amounts in foreign currency acquired in connection with its activities abroad for the transfer of payments relating to its investments.

(d) At the request of the other Contracting Party, consultations shall take place between the parties concerned on the implementation of the above measures.

Article 5. Expropriation, Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalisation or any other measure having the same character or effect, in respect of investments belonging to investors of the other Contracting Party, except for reasons of public interest and provided that such measures are non-discriminatory, comply with the legal provisions in force and give rise to the payment of effective and adequate compensation. The amount of the compensation, including interest, shall be paid in the currency of the country of origin of the investment and shall be delivered without delay to the right holder, irrespective of his domicile or headquarters.

Extraordinary circumstances

(2) Investors in one Contracting Party whose investments have suffered losses as a result of war or other armed conflict, revolution, state of emergency or revolt in the territory of the other Contracting Party shall be treated by the latter as provided in Article 3 (2) of this Convention with regard to restitution, compensation, indemnification or other remedies.

Article 6. Investments Made Prior to the Agreement

(1) This Convention shall also 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 the entry into force of this Convention.

(2) This Convention shall not apply to differences or disputes arising prior to its entry into force.

Article 7. More Favourable Conditions

Subject to the provisions of this Convention, the most favourable terms agreed or to be agreed between one of the Contracting Parties and investors of the other Contracting Party shall apply.

Article 8. Subrogation

Where a Contracting Party has agreed to a financial guarantee against non-commercial risks in relation to an investment made by one of its investors in the territory of the other Contracting Party, the latter shall recognise the rights of the first Contracting Party according to the principle of subrogation to the rights of the investor, if a payment has been made under this guarantee by the first Contracting Party.

The insurer may not exercise other rights than those which the investor would have been entitled to exercise.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any investment dispute within the meaning of this Convention arising between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute. To this end, consultations shall be held between the parties concerned.

(2) If these consultations fail to provide a solution, the dispute may be submitted to the competent jurisdictions of the Contracting Party in whose territory the investment is located.

(3) If, within eighteen months of the notification of the commencement of the proceedings before the competent courts, the latter have not issued a final decision, the dispute may be submitted, at the request of the investor, to one of the arbitration procedures provided for in paragraph (5) of this Article.

(4) As soon as one of the arbitration procedures has been initiated, each party to the dispute shall take all necessary steps to withdraw from the ongoing court proceedings.

(5) In the event of recourse to international arbitration, the dispute may be submitted, at the request of the investor, to one of the arbitration bodies designated below:

- to 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, where both Contracting Parties are parties thereto.

- to an ad hoc arbitration tribunal, established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(6) No Contracting Party to a dispute may object, at any stage of the arbitration proceedings, that the investor has received compensation intended to cover all or part of the damage suffered, under a policy of insurance or guarantee provided for in Article 8 of this Convention.

(7) The arbitration body shall decide on the basis of the provisions of this Convention and other applicable conventions between the Contracting Parties, the terms of particular agreements concluded in relation to investment, the law of the Contracting Party party to the dispute, including the rules relating to conflict of laws, and the principles and provisions of international law in this field.

(8) Arbitration awards shall be final and binding on the parties to the dispute.

Article 10. Disputes between Contracting Parties

(1) Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Convention shall be settled through diplomatic channels.

(2) If the two Contracting Parties fail to reach a solution within twelve months of the beginning of the dispute, the latter shall, at the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint an arbitrator. The two arbitrators so appointed shall appoint a chairman who must be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not responded to the invitation of the other Contracting Party to make such an appointment within two months, the arbitrator shall be appointed, at the request of the latter Contracting Party, by the President of the International Court of Justice.

(4) If the two arbitrators cannot agree on the choice of the Chairman within two months of their appointment, the latter shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

(5) If, in the cases provided for in paragraphs (3) and (4) of this Article, the President of the International Court of Justice is unable to perform his functions or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President and, if the latter is unable to perform his functions or is a national of one of the Contracting Parties, the appointments shall be made by the most senior Member of the Court who is not a national of any of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the Court shall determine its own rules of procedure.

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

Article 11. Enforcement of Obligations

Each Contracting Party shall at all times observe the obligations it has assumed in respect of investments made by investors of the other Contracting Party.

Article 12. Entry Into Force, Renewal and Termination

This Convention shall enter into force on the day on which the two Governments have notified each other of the completion of their respective constitutional formalities for the conclusion and entry into force of the treaties; it shall remain in force for a period of ten years. Unless it is denounced in writing six months before the expiry of that period, this Convention shall be renewed under the same conditions for successive periods of two years.

In the event of denunciation, the provisions of Articles 1 to 11 of this Convention shall continue to apply to investments made before such denunciation, for a period of ten years.

Done at Berne, 12 April 1991, in four originals, two in French and two in Spanish, all being equally valid.

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC

Protocol

In the act of signing the Convention between the Argentine Republic and the Swiss Confederation on the reciprocal promotion and protection of investments, the undersigned plenipotentiaries have further agreed to the following provisions, which constitute an integral part of this Convention.

Ad. Article 1(1)(a).

(1) This Convention shall not apply to investments by natural persons who are nationals of both Contracting Parties, unless such persons were, at the time of the investment, and continue to be, domiciled outside the territory of the Contracting Party in which the investment was made.

(2) With respect to the provisions of Articles 4 and 9, natural persons who are nationals of a Contracting Party and who have their domicile in the territory of the Contracting Party where the investment is situated may only take advantage of the treatment accorded by that Contracting Party to its own nationals.

Ad. Article 1(1)(c).

(1) This Convention shall apply to investments of legal entities effectively controlled by nationals of a Contracting Party only where those nationals are domiciled outside the territory of the Contracting Party in which the investment was made.

(2) Legal entities referred to in Article 1 (1) (c) which wish to avail themselves of this Convention may be requested to furnish proof of such control. The following facts, inter alia, shall be accepted as evidence:

1. The character of a subsidiary of a legal entity established under the law of that Contracting Party.
2. A percentage of direct or indirect holding in the capital of a legal entity which affords effective control, such as, in particular, a holding of more than half of the capital.
3. Direct or indirect holding of the number of votes necessary to obtain a decisive position in the bodies of the company.

Ad. Article 1(2).

The rights corresponding to the categories of assets referred to in Article 1(2) shall be defined in accordance with the law of the Contracting Party on whose territory the investment was made.

Ad. Article 3(2).

(1) As far as the Argentine Republic is concerned, a Swiss investor may not take advantage of special treatment of a financial, including fiscal, nature granted by the Argentine Republic under agreements concluded in the framework of development cooperation involving concessional financing.

(2) In the case of joint ventures, these shall enjoy the treatment provided for in Article 3 as entities.

Done at Berne, 12 April 1991, in four originals, two in French and two in Spanish, all being equally valid.