

Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Armenia on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and the Government of the Republic of Armenia, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives;

Recognizing that the development of economic and business ties can promote respect for internationally recognized labour rights; and

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" shall mean any kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the legislation of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as leases, mortgage, lien, pledge, usufruct and similar rights;

(b) Shares, stocks or other kinds of interest in a company or enterprise;

(c) Title to money or any performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) The term "investor" of a Contracting Party shall mean:

(a) Any natural person who is a national of that Contracting Party in accordance with its law; and

(b) Any legal person or other organisation organized in accordance with the law in that Contracting Party, and

(c) Any legal person not organized under the law of that Contracting Party but controlled by an investor as defined under (a) or (b)

(3) The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profits, interests, capital gains, dividends, royalties or fees.

(4) The term "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone and the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(3) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

(4) The investments made in accordance with the legislation of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case shall a Contracting Party award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with investors of the other Contracting Party with regard to their investment.

(5) Each Contracting Party shall provide effective means of asserting claims and enforcing rights with respect to investments covered by this Agreement.

(6) Each Contracting Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain or affect investments covered by this Agreement are promptly published or otherwise made publicly available.

(7) Returns yielded from an investment shall be given the same treatment and protection as an investment.

Article 3. National and Most Favoured Nation Treatment of Investments

(1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant, by virtue of such agreements, more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements.

(3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

(1) Investments of investors of one Contracting Party shall not be nationalized, alienated, expropriated or otherwise subjected to any other measures having effect equivalent to alienation, expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party unless the measures are taken in the public interest, under due process of law, on a non-discriminatory basis, and against:

(a) Prior, adequate and effective compensation, when expropriation is carried out in the territory of the Republic of Armenia, and

(b) Prompt, adequate and effective compensation when expropriation is carried out in the territory of the Kingdom of Sweden.

(2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before

the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provisions of Paragraph (1) and (2) of this Article shall also apply to the returns from an investment as well as and, in the event of liquidation, to the proceeds from the liquidation.

(4) Where a Contracting Party expropriates the assets of a company or an enterprise in its territory in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee compensation in respect of their investment to such investors of the other Contracting Party.

Article 5. Compensation for Losses

(1) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

(2) Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from

(a) Requisitioning of its investment or part thereof by the latter's forces or authorities; or

(b) Destruction of its investment or part thereof by the latter's forces or authorities, which were not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 6. Transfers

(1) Each Contracting Party shall allow without delay, the transfer in a freely convertible currency of payments in connection with an investment, and shall include in particular though not exclusively:

(a) The returns;

(b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans;

(d) A compensation according to Article 4 or 5; and

(e) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

Article 8. Disputes between an Investor and a Contracting Party

- (1) Any dispute concerning an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably through negotiations between the parties to the dispute.
- (2) If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:
- (a) To the competent courts of the Contracting Party in whose territory the investment is made; or
 - (b) To arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or
 - (c) To arbitration by the Additional Facility of the Centre; if the Centre is not available under the Convention, or
 - (d) In accordance with any applicable previously agreed dispute settlement procedure, or
 - (e) To any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (3) Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the New York Convention. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.
- (4) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to international arbitration in accordance with this Article. The consent implies the renunciation of the requirement that internal administrative or juridical remedies should be exhausted.
- (5) Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.
- (6) For the purpose of arbitration under this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.
- (7) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. The arbitral tribunal shall state the basis of its award and give reasons upon the request of either party. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such an award.

Article 9. Disputes between the Contracting Parties

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Contracting Parties.
- (2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.
- (3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.
- (4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.
- (5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.
- (6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the

Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 10. Application of the Agreement

(1) This Agreement shall apply to all investments made in the territories of the Contracting Parties, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 11. Amendments and Changes

The Contracting Parties may make amendments and changes to this Agreement by mutual consent. Such amendments and changes shall enter into force in the manner prescribed in Article 12.

Article 12. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years.

Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 11 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Stockholm on February 2006 in duplicate in the Swedish, the Armenian and the English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

For the Government of the Republic of Armenia