

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

Preamble

The Swiss Federal Council and the Government of the Islamic Republic of Iran, hereinafter referred to as the "Contracting Parties",

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,

Recognizing 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

For the purpose of this Agreement:

(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, including companies, corporations, business associations and other organisations, which are established under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;
- (c) Legal entities not established under the law of that Contracting Party but effectively controlled by natural persons as defined in (a) above or by legal entities as defined in (b) above.

(2) The term "investments" shall include every kind of assets and particularly:

- (a) Movable and immovable property as well as any other rights related thereto, such as mortgages, liens, pledges or usufructs;
- (b) Shares or any other kind of participation in companies;
- (c) Title to money or to any performance having an economic value;
- (d) Intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names), know-how and goodwill;
- (e) Rights to search for, extract or exploit natural resources as well as all other business rights, given by law, by contract or by decision of the authority in accordance with the law.

(3) The term "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

(4) The term "territory" means the territory of each Contracting party, including 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. Application, Invocation

(1) 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. It shall, however, not be applicable to divergencies or disputes which have arisen prior to its entry into force.

(2) Without prejudice to the provisions of paragraph (1), each Contracting Party may with respect to investments in its territory of investors of the other Contracting Party make dependent the right of any such investor to raise a claim under the present Agreement on the condition that the investment concerned has been approved by its authorities.

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 authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 3, paragraph (2) of this Agreement..

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) 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, a common market or a similar regional organization 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 shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

(a) Returns on investments;

(b) Amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;

(c) The proceeds, including possible capital appreciation, arising from the sale or the partial or total liquidation of the investment.

(2) Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 6. Dispossession, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation or nationalization against investments of investors of the other Contracting Party, or any other measures depriving such investors of their investments, 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. The amount of compensation shall be paid without delay to the person entitled thereto.

(2) Where investments of an investor of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of

the other Contracting Party, the investor concerned shall be accorded treatment, as regards any settlement, not less favourable than would be accorded in the same circumstances to an investor of the other Contracting Party or any other third State.

Article 7. More Favourable Provisions

Notwithstanding the terms set forth in the present Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 8. 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. This Contracting Party may nevertheless entitle the investor to assert the subrogated rights vis-à-vis the other Contracting Party.

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

(1) With a view to an amicable solution of disputes between a Contracting Party and an investor of the other Contracting Party concerning an investment covered by this Agreement and without prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), 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 the request for settlement, either party to the dispute may submit the case to an arbitral tribunal which shall be constituted for each individual case (ad hoc tribunal). Unless the parties to the dispute have agreed otherwise, each of them shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State which has diplomatic relations with both Contracting Parties. The arbitrators are to be appointed within two months of the receipt of the request for arbitration and the chairman is to be nominated within further two months. The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) shall serve as default rules.

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.

(4) The Contracting Party which is a party to the dispute shall at no time whatsoever during the arbitral procedure or the execution of the award assert as a defence its immunity.

Article 10. Disputes between Contracting Parties

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by consultation and negotiation.

(2) If both Contracting Parties cannot reach an agreement within twelve 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 which has diplomatic relations with both Contracting Parties.

(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 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, 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 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other in writing that they have complied with the constitutional requirements for its conclusion and entry into force, 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 present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Teheran, on 8th of March 1998, in duplicate in French, Persian and English language, all texts being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council For the Government of the Islamic Republic of Iran

For the Government of the Islamic Republic of Iran.

On signing the Agreement between the Swiss Confederation and the Islamic Republic of Iran on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have agreed on the following clarifications, which shall be regarded as an integral part of the said Agreement:

Ad Article 1 (a) An investor according to Article 1, paragraph (1), letter (c) may be required to submit proof of such control in order to be recognized by the Contracting Party in the territory of which the investment has been or is to be made as an investor of the other Contracting Party. Effective control may be exercised through majority ownership or majority voting rights in a company

(b) In case a Contracting Party takes measures restricting the transfer of payments with respect to investments of companies established in a third country, an investor according to Article 1, paragraph (1), letter (c) may not request being exempted from such measures.

(c) An investor referred to in Article 1, paragraph (1), letter (c) may not invoke the dispute settlement procedures of this Agreement while the respective claim is pending before a dispute settlement body of another Investment Protection Agreement concluded by the Contracting Party in whose territory the investment was made.

Ad Article 2 With regard to Article 2, paragraph (2) it is understood that under the legislation at present in force in the Islamic Republic of Iran foreign investments have to be specifically approved by the Ministry of Economic Affairs and Finance in order for the investors to be able to raise a claim under the present Agreement. Such approval, which may be made dependent on the fulfilment of certain conditions, may be applied for by Swiss investors at any time in respect of any investment whether made before or after the entry into force of this Agreement.

Ad Article 9 and 10 It is understood that a Contracting Party's right according to this Agreement to submit a dispute to international arbitration may be subject to the fulfilment of certain conditions provided for in its laws and regulations.

Done at Teheran, on 8th of March 1998, in duplicate in French, Persian and English language, all texts being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council For the Government of the Islamic Republic of Iran

For the Government of the Islamic Republic of Iran.