

Agreement Between the Swiss Confederation and the Republic of Djibouti concerning the promotion and the reciprocal protection of investments

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

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 "investor" means with respect to each 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 subparagraphs (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, guarantees and usufruits;
- (b) Shares, and other forms of participation shares in companies;
- (c) Monetary claims and rights to any performance having 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 "returns" means the 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 required authorisations 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 and income of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall interfere in any way, by unjustified or discriminatory measures, with the management, maintenance, use, enjoyment, increase or disposition of such investments.

(2) Each Contracting Party shall accord in its territory to investments and income of investors of the other Contracting Party treatment no less favorable than that accorded to investments and income of its own investors or to investments and income of investors of any third State, whichever treatment is more favorable to the investor concerned.

(3) Each Contracting Party shall accord in its territory to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment or disposition of their investments, treatment no less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Contracting Party grants special advantages to investors of a third State under an agreement establishing a free trade area, a customs union or a common market or under an agreement for the avoidance of double taxation, it shall not be obliged to grant such advantages to investors of the other Contracting Party.

Article 5. Free Transfer

Each Contracting Party in whose territory investors of the other Contracting Party have made investments shall allow such investors the free transfer of amounts relating to such investments, including

- (a) income;
- (b) loan repayments;
- (c) amounts to cover investment management costs;
- (d) royalties and other payments arising from the rights listed in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement (c), (d) and (e) of this Agreement;
- (e) additional capital contributions necessary for the maintenance or development of the investments;
- (f) proceeds from the sale or liquidation of all or part of an investment, including any capital gains.

Article 6. Expropriation, Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measure of the same character or effect against investments of investors of the other Contracting Party, except for reasons of public interest and provided that such measures are non-discriminatory, in conformity with legal requirements and result in the payment of effective and adequate compensation. The compensation shall amount to the market value of the expropriated investment immediately before the expropriation measure is undertaken or becomes public knowledge, whichever is earlier. The amount of the compensation, including interest, shall be paid in a freely convertible currency and shall be paid without delay to the entitled person, regardless of his domicile or registered office.

(2) Investors of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of emergency or revolt in the territory of the other Contracting Party shall be treated by the latter Contracting Party in accordance with Article 4 of this Agreement as regards restitution, compensation, indemnification or

any other form of settlement.

Article 7. 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 8. 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 and without prejudice to Article 9 of this Agreement (settlement of disputes between the 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, the investor may submit the dispute to the national jurisdiction of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter case, the investor shall have the choice between:

(a) An ad hoc arbitral tribunal which unless the parties to the dispute agree otherwise, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); and

(b) 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, when both parties are Contracting Parties to this Convention.

(3) The Contracting Parties agree to submit the dispute to arbitration in accordance with subparagraph (2) above.

(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) 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.

(6) The arbitral award shall be final and binding upon the parties to the dispute and shall be executed according to the national legislation.

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 exercising his mandate 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 rules of procedure.

(7) The decisions of the Tribunal shall be 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 continue to apply for a further period of ten years for investments made prior to the termination of the Agreement.

Done at Djibouti, this 4th day of February 2001, in duplicate in the French language.

For the Swiss Federal Council:

Paolo Brogini

Ambassador of Switzerland

For the Government of the Republic of Djibouti:

Ali Abdi Farah

Minister of Foreign Affairs and International Cooperation