

Accord entre la Confédération Suisse  
et  
concernant la promotion et la protection  
réciproques des investissements

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Projet standard suisse  
(1er mars 1979)

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Agreement between the Swiss Confederation  
and  
on the reciprocal promotion and protection  
of investments

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Swiss Standard Draft  
(1st March, 1979)

The Swiss Federal Council and the Government of

Desirous of strengthening the economic co-operation between both States,

Recognizing the important complementary role of foreign investment in the economic development process and the right of either Contracting Party to determine this role and to define the conditions under which foreign investment would participate in this process,

Recognizing that the key to achieving and maintaining adequate flow of capital lies in the maintenance of an appropriate mutually created investment climate and in the respect by foreign investors of the sovereignty and the laws of the host country having jurisdiction on them and in their acting consistently with the declared policies and the priorities of the host countries and in their endeavouring to substantially contribute to the development of the country,

Intending to create favourable conditions for capital investments in both States and to intensify the co-operation between nationals and companies, private as well as public, of both States in the field of technology, industrialization and productivity,

Recognizing the need to protect investments by nationals and companies of both States and to stimulate the flow of capital with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1

Promotion, admission

Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation and rules and regulations framed thereunder.

Article 2

Protection

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, selling and, should it so happen, liquidation of such investments. In particular, each Contracting Party shall endeavour to grant the necessary permits in connection with such investments and with the carrying out of contracts of licence and technical, commercial or administrative assistance. Each Contracting Party shall also, wherever needed, endeavour to issue the necessary authorizations with regard to the activities of consultants and other qualified persons of foreign nationality.

Treatment

(2) Each Contracting Party shall in particular ensure fair and equitable treatment within its territory to the investments of the nationals or companies of the other Contracting Party. This treatment shall be at least equal to that granted by each Contracting Party to investments made within its territory by its own nationals or companies or nationals or companies of the most favoured nation, if the latter is more favourable.

Customs union

(3) The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals or companies of a third State because of its membership in, or association with, a customs union, a common market or a free trade area.

Article 3

Free transfer

Each Contracting Party in the territory of which investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer:

- (a) of interests, dividends, benefits and other current returns;
- (b) of amortisation and contractual repayments;
- (c) of amounts assigned to cover expenses relating to the management of the investment;
- (d) of royalties and other payments deriving from rights of licence and commercial, administrative or technical assistance;
- (e) of additional contributions of capital necessary for the maintenance or development of the investment;
- (f) of the proceeds of selling and of partial or total liquidation of capital, including possible increment values.

Article 4

Dispossession,  
compensation

Neither of the Contracting Parties shall take measures of expropriation, nationalization or dispossession, either direct or indirect, against investments belonging to nationals or companies of the other Contracting Party, 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 according to international law. The amount of compensation, which shall have been fixed at the time of expropriation, nationalization or dispossession, shall be settled in the currency of the country of origin of investment and paid without undue delay to the person entitled thereto, whichever shall be its place of domicile or residence.

territory of which  
of companies

Article 5

Pre-agreement  
investments

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation prior to the entry into force of this Agreement by nationals or companies of the other Contracting Party.

Contract  
tions

Article 6

More favourable provisions

Provisions more favourable than those of this Agreement which have been agreed upon by either of the Contracting Parties with nationals or companies of the other Contracting Party are reserved.

Article 7

Principle of  
subrogation

Where one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or company in the territory of the other Contracting Party and payment has been made by the first Contracting Party to its own national or company, the other Contracting Party shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor.

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Article 8

Definitions

For the purpose of this Agreement:

- a) "Nationals" are physical persons who, according to the law of each Contracting Party, are considered as citizens of that State.
- b) "Companies" are:
  - aa) with respect to the Swiss Confederation, companies, institutions or foundations with legal personality, as well as partnership firms or limited partnerships and other associations without legal personality, in which Swiss nationals have directly or indirectly a controlling interest;
  - bb) with respect to

- c) The term "investments" shall comprise every kind of asset and more particularly, though not exclusively:
- aa) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs, and similar rights;
  - bb) shares or other kinds of interest in companies;
  - cc) titles to money or to any performance having an economic value;
  - dd) copyrights, industrial property rights (so as patents for inventions, trade-marks, industrial designs), know-how, trade-names and goodwill;
  - ee) business concessions under public law, including concessions to search for, extract or exploit natural resources.
- d) The term "returns" shall mean the amounts yielded by an investment as net profit or interest for a specific period.

Article 9

Arbitration

(1) Disputes as to the interpretation or application of the provisions of this Agreement shall be settled by means of diplomatic negotiations.

(2) If both Contracting Parties cannot reach an agreement within six months, the dispute shall, upon the 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.

(3) If either Contracting Party 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 come to 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 next 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 binding for each Contracting Party.

Article  
into  
renewal  
action

Use

be made  
trial of  
be made  
trial of

force, renewal,  
termination

when both Governments will have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements and shall remain binding for a period of five years. Unless written notice of termination six months before the expiration of this period is given, it shall be considered as renewed 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 9 shall continue to be effective for a further period of ten years for investments made before official notice was given.

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HANDELSABTEIL  
Dienst für W

DONE at ....., on .....;  
in two originals in English and two originals in German/French,  
both texts being equally authoritative.

For the Swiss Federal Council    For the Government of