

**A g r e e m e n t**

**between**

**the Swiss Confederation**

**and**

**the Great Socialist People's Libyan Arab Jamahiriya**

**on the Promotion and Reciprocal Protection**

**of Investments**

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**Preamble**

The Swiss Confederation and the Great Socialist People's Libyan Arab Jamahiriya,

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

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 constituted or otherwise duly organised under the law of that Contracting Party.
- (2) The term "investment " shall include every kind of asset and in particular:
  - (a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;
  - (b) shares, parts or any other kind of participation in companies;
  - (c) claims to money or to any performance having an economic value, if such claims are related to an investment;
  - (d) intellectual and industrial property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
  - (e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.
- (3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.
- (4) The term "territory" includes 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

### **Scope of application**

This Agreement shall apply to investments in the territory of one Contracting Party that are owned or controlled, directly or indirectly, by investors of the other Contracting Party. It applies to any such investments, whether made prior to or after its entry into force, however not to disputes relating to facts which occurred before that date.

## 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 provide, in accordance with its laws and regulations, all necessary permits or authorisations in connection with such an investment including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance as well as authorisations required for the activities of consultants and experts of the investor's choice.

## Article 4

### **Protection, treatment**

- (1) Investments and returns 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 in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.
- (2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords



to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.

- (3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.
- (4) 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 or a common market 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 their investments, particularly of:
  - (a) returns;
  - (b) payments relating to loans incurred, or other contractual obligations undertaken, for the investment;
  - (c) proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
  - (d) the initial capital and additional amounts to maintain or increase the investment.
- (2) 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.
- (3) A transfer shall be deemed to have been made "without delay" if effected within such period as is normally required for the completion of transfer formalities.



**Article 6**

**Dispossession, compensation**

- (1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors 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. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of compensation, interest included, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.
- (2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

**Article 7**

**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.

**Article 8**

**Disputes between a Contracting Party  
and an investor of the other Contracting Party**

- (1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party concerning an obligation under this Agreement consultations shall take place between the Parties concerned.
- (2) If these consultations do not result in a solution within six months from the date of the written request for consultations, the investor may submit the dispute either to the competent courts or administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event the investor has the choice between either of the following:
  - (a) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965, as soon as both Contracting Parties are members to this Convention; or
  - (b) an ad hoc-arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party hereby consents to the submission of an investment dispute to such arbitration.

- (3) The Contracting Party which is party to the dispute shall at no time whatsoever during the process assert as a defence its immunity or the fact that the investor has received a compensation, under an insurance contract, covering the whole or part of the incurred damage or loss.
- (4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.
- (5) The arbitral award shall be final and binding for the parties to the dispute and shall be executed without delay according to the law of the Contracting Party concerned.

**Article 9**

**Disputes between Contracting Parties**

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If the dispute between the Contracting Parties cannot be settled within a period of six months from the date at which the issue was raised in writing by one of the Contracting Parties, it shall upon request of either Party to the dispute be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then within two months select a national of a third State who shall be the Chairman of the tribunal.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also otherwise prevented from discharging the said function, the Member of the International Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall determine its own procedures, unless the Contracting Parties agree otherwise. It shall reach its decisions by a majority of votes. The decisions by the tribunal shall be final and binding upon both Contracting Parties.
- (6) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.





**Article 10**

**More favourable provisions**

If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions or rules shall to the extent that they are more favourable prevail over this Agreement.

**Article 11**


**Other commitments**

Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

**Article 12**

**Final provisions**

- (1) This Agreement shall enter into force on the day when both States have notified each other that they have complied with the legal requirements for the entry into force of international agreements, 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.



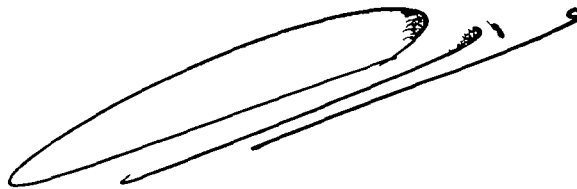
IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

This Agreement has been done in duplicate, and signed in the city of Berne, on 8 December 2003, each in Arabic, French and English language, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Confederation

A handwritten signature in black ink, appearing to be 'Klein', written in a cursive style.

For the Great Socialist People's  
Libyan Arab Jamahiriya

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.