

Agreement
between the Swiss Confederation and Georgia
on the Promotion and Reciprocal Protection of Investments

Preamble

The Swiss Confederation and Georgia, 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 and sustainable development of both States,

Convinced that these objectives can be achieved without relaxing health, safety, labour and environmental standards of general application,

Affirming the mutual supportiveness of investment, environment and labour policies in this respect,

Reaffirming their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law,

Determined to encourage investors to respect internationally recognized corporate social responsibility standards and principles,

Confirming their commitment to prevent and combat corruption in international investment,

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, within the meaning of 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 and have their seat, together with substantial business activities, in the territory of that 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 "investment" means any kind of tangible or intangible asset invested in the territory of one Contracting Party by investors of the other Contracting Party in accordance with the legislation of the former Contracting Party, and includes 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, except claims to money arising solely out of commercial contracts for the sale of goods and services;
 - (d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill; and
 - (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.

In order to qualify as an investment for the purposes of this Agreement, an asset must have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk.

- (3) The term "return" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.
- (4) The term "territory" means:
- In respect of Georgia:
the territory within the internationally recognized state borders of Georgia, including land territory, internal waters and territorial sea, the air space above them as well as the contiguous zone, the exclusive economic zone and the continental shelf adjacent to its territorial sea, in respect of which Georgia may exercise its sovereign rights in accordance with international law.
 - In respect of the Swiss Confederation:
the territory of Switzerland as designated in its laws in accordance with international law.

Article 2

Scope of application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its legislation by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force.

Article 3

Promotion, admission

- (1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party, including through the exchange of information between the Contracting Parties on investment opportunities, and admit such investments in accordance with its legislation.
- (2) Each Contracting Party shall facilitate, in accordance with its legislation, the issuing of the necessary permits in connection with an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.
- (3) The Contracting Parties recognize that it is inappropriate to weaken or reduce the level of protection provided by domestic health, safety, labour or environmental laws, regulations or standards with the sole intention to encourage investment. Accordingly, a Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws, regulations or standards in order to encourage investment of an investor from the other Contracting Party.

Article 4

Protection, treatment

- (1) Investments 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 of investors of the other Contracting Party treatment not less favourable than that which it accords to investments of its own investors or to investments 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.
- (5) It is understood that the most favoured nation treatment as referred to in paragraphs 2 and 3 does not apply to mechanisms for the settlement of investment disputes provided for in this or other international agreements concluded by the Contracting Party concerned.

Article 5

Free transfer

- (1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the amounts relating to these investments without delay, in particular of:
 - (a) returns;
 - (b) repayments of loans;
 - (c) amounts assigned to cover expenses relating to the management of the investment;
 - (d) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;
 - (e) additional contributions of capital necessary for the maintenance or development of the investment;
 - (f) the proceeds of the partial or total sale or liquidation of the investment, including possible increment values.
- (2) For the avoidance of doubt it is confirmed that a Contracting Party may delay and/or prevent a transfer through the equitable, non-discriminatory, and good faith application of measures relating to any fiscal obligation, protection of rights of creditors or compliance with judicial or administrative judgments.

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 at a normal commercial rate 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

Principle of subrogation

If an investor of a Contracting Party receives payment, pursuant to an insurance contract against non-commercial risks, from an insurer constituted or organised under the law of that Contracting Party, the other Contracting Party shall recognize the assignment of any right or claim of the investor to the insurer, and the right of the insurer to exercise such right or claim by virtue of subrogation to the same extent as the predecessor in title.

Article 8

Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal entity of such other Contracting Party and to investments of that investor if this legal entity has no substantial business activities in the territory of the other Contracting Party and a natural person or a legal entity of a third State, or of the denying Contracting Party, own or control the legal entity.

Article 9

Right to Regulate

- (1) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure consistent with this Agreement that is in the public interest, such as measures to meet health, safety, labour or environmental concerns or reasonable measures for prudential purposes.
- (2) The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party.

Article 10

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

- (1) Disputes between a Contracting Party and an investor of the other Contracting Party regarding an investment of the latter made in the territory of the former, which are based on an alleged breach of obligations under this Agreement that caused loss or damages to the investor of the other Contracting Party, shall be, to the extent possible, settled amicably through consultations.
- (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 courts or the 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 (hereinafter the "Convention of Washington"); and
 - (b) an *ad hoc*-arbitral tribunal which shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (3) The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to the settlement of disputes between a Contracting Party and an investor of the other Contracting Party under paragraph (2), letters (a) and (b) of this Article.
 - (4) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.
 - (5) No investment dispute may be submitted to international arbitration under paragraph (2), letters (a) and (b) of this Article if more than five years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and the loss or damage that the latter has allegedly incurred.
 - (6) A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which before a dispute arises was under the control of investors of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention of Washington, be treated as a company of the other Contracting Party.
 - (7) 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, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.
 - (8) 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.
 - (9) 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 11

Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within six 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.
- (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 is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or 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 arbitral tribunal shall determine its procedure. It shall reach its decision by a majority of votes. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless the tribunal decides otherwise.
- (7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 12

Other commitments

- (1) If provisions in the legislation of either Contracting Party or international obligations between the Contracting Parties entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions and obligations shall to the extent that they are more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any obligation it has assumed with regard to an investment in its territory by an investor of the other Contracting Party in the exercise of its sovereign authority, which the investor could rely on in good faith when making or modifying the investment.

Article 13

Changes and amendments

Changes and amendments to this Agreement may at any time be made by mutual consent of the Contracting Parties. Such modifications shall enter into force in accordance with paragraph (1) of Article 14 of this Agreement.

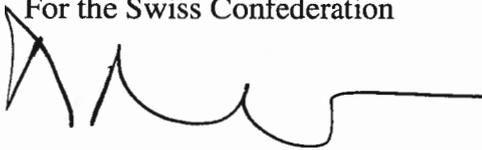
Article 14

Final provisions

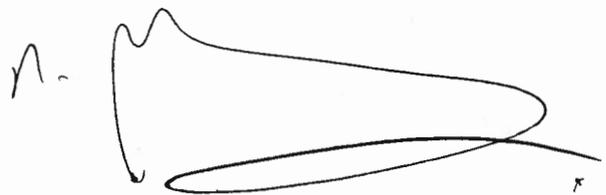
- (1) Both Contracting Parties shall notify each other through diplomatic channels that they have complied with the legal requirements for the entry into force of this Agreement.
- (2) This Agreement shall enter into force on the date of receipt of the last written notification pursuant to paragraph (1), and shall remain in force for a period of ten years. Thereafter, it shall automatically remain in force for successive periods of two years, unless either Contracting Party gives the other Contracting Party written notice of termination six months before the expiration of the initial or any subsequent period.
- (3) In case of official notice as to the termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before the date of termination.

Done in duplicate, at Tbilisi, on 3 June 2014, each in French, Georgian and English, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Swiss Confederation



For Georgia



Protocol

On signing the Agreement between the Swiss Confederation and Georgia on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions.

Ad Article 7 and Article 10 paragraph 7

It is understood that these provisions do not allow for the double recovery of the compensation by the investor.

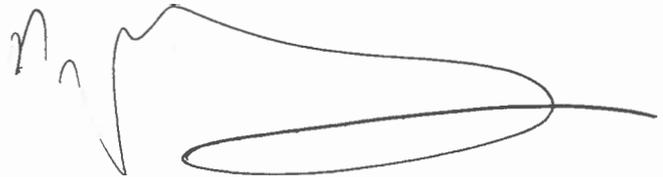
Ad Article 10 paragraph 7

It is understood that the reference to immunity means immunity from jurisdiction.

For the Swiss Confederation

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For Georgia

A handwritten signature in black ink, featuring a large, sweeping loop and a long horizontal tail.