

A g r e e m e n t

between

the Swiss Confederation

and

the Republic of Ghana

on the Promotion and Reciprocal Protection

of Investments

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Preamble

The Swiss Confederation and the Republic of Ghana,

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:

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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 constituted or otherwise duly organised 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 established under the law of any country which are effectively controlled by nationals of that Contracting Party having a substantial part in the ownership.
- (2) The term "investments" shall include every kind of assets and particularly:
 - (a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;
 - (b) shares, parts or any other kinds of participation in companies;
 - (c) claims to money or to any rights to any performance having an economic value;
 - (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 other business assets;
 - (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.

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- (3) 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

Promotion, admission

- (1) Each Contracting Party shall in its territory promote 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, in accordance with its laws and regulations, 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 3

Protection

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.

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Article 4

Treatment

- (1) 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 any third State, if this latter treatment is more favourable.
- (2) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in an existing or future free trade agreement, a customs or economic union or a similar regional organisation to which either of the Contracting Parties is or becomes a member.

Article 5

Taxation

- (1) With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who through a legal entity in its territory are engaged in any economic activity, treatment not less favourable than that accorded to its own nationals or to those of any third State, whichever is more favourable to the investors concerned.
- (2) For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party under an agreement for the avoidance of double taxation, by virtue of its participation in a free trade agreement, a customs or economic union or a similar regional organisation to which either of the Contracting Parties is or becomes a member, ~~or on the basis of reciprocity with a third State.~~

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Article 6

Repatriation of investments and returns

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 payments relating to these investments, particularly of:

- (a) interests, dividends, benefits and other current 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 sale or the partial or total liquidation of the investment, including possible increment values.

Article 7

Expropriation

- (1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party unless the following conditions are complied with:
 - (a) the measures are taken for a public purpose related to the internal needs of that Contracting Party, on a non-discriminatory basis and under due process of law;
 - (b) the measures are accompanied by provision for the payment of compensation amounting to the full and genuine value of the investment expropri-

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- ated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier;
- (c) payments of compensation shall be made without undue delay and shall be freely transferable to the country designated by the claimants concerned and in any freely convertible currency accepted by the claimants; and
 - (d) if the compensation is not paid within six months after its determination, it shall from that date attract interest at the normal commercial rate until the date of payment.
- (2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt determination of the amount of compensation either by law or by agreement between the parties and to prompt review, by a judicial or other independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set out in paragraph (1) of this Article, without prejudice to the procedures contained in Article 12 and 13 of this Agreement.

Article 8

Compensation for losses

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 on 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. They shall, in all events, be entitled to compensation.

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Article 9

Existing Investments

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement.

Article 10

Application of other 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 11

Principle of subrogation

Where one Contracting Party has granted any financial security 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.

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Article 12

**Settlement of disputes between an investor
and a host state**

- (1) Disputes between one Contracting Party and an investor of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter in the territory of the former Contracting Party shall if possible be settled amicably.
- (2) If such disputes cannot be settled according to the provisions of paragraph (1) of this article within a period of six months from the date either party to the dispute requested amicable settlement, the dispute shall be submitted to international arbitration or conciliation.
- (3) Where the dispute is referred to international arbitration or conciliation, the aggrieved party may refer the dispute either to:
 - (a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965 and the additional facility for the administration of conciliation, arbitration and fact finding proceedings); or
 - (b) an international arbitrator or an ad hoc arbitration tribunal to be appointed by a special agreement or established under the arbitration rules of the United Nations Commission on International Trade Law.
- (4) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration or conciliation.

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Article 13

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 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.
- (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.

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Article 14

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 15

Final provisions

- (1) This Agreement shall enter into force on the day when both Contracting Parties 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 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 five years, and so forth.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 14 shall continue to be effective for a further period of ten years for investments made before official notice was given.

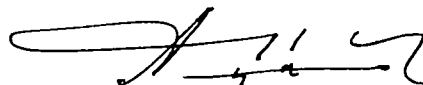
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Done at Accra, on October 8th 1991, in
four originals, two in English language and two in French, each text being equally authentic.



For the Swiss Confederation:



For the Republic of Ghana: