

No. 12640

**SWITZERLAND
and
ZAIRE**

Agreement concerning the protection and promotion of investments. Signed at Kinshasa on 10 March 1972

Authentic text : French.

Registered by Switzerland on 22 June 1973.

**SUISSE
et
ZAÏRE**

Accord relatif à la protection et à l'encouragement des investissements. Signé à Kinshasa le 10 mars 1972

Texte authentique : français.

Enregistré par la Suisse le 22 juin 1973.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE SWISS CONFEDERATION AND
THE REPUBLIC OF ZAIRE CONCERNING THE PROTECTION
AND PROMOTION OF INVESTMENTS

The Government of the Swiss Confederation and the Government of the Republic of Zaire,

Wishing to develop economic co-operation between the two States,

Desiring to create favourable conditions for the investment of capital by nationals and companies of one of the two States in the territory of the other State and

Recognizing that the protection of such investments by means of an agreement is likely to stimulate private and public economic initiative and to increase the prosperity of the two nations,

Have agreed as follows :

Article 1. In this Agreement, “investments” means contributions in cash or in kind made by the nationals or companies of one of the Contracting Parties in the territory of the other Party, in accordance with the legislation of the Contracting Parties applicable to investments, either for the purpose of creating new capacity for the production of goods or services or in order to rationalize production methods or improve their quality.

“Nationals” means individuals who, under the legislation of either Contracting State, have the nationality of that State.

“Companies” means commercial companies (joint-stock companies, general partnerships, limited partnerships), collective organizations and establishments or foundations in which nationals of one of the two Contracting Parties have a majority interest.

Article 2. The investments, property, rights and interests of nationals or companies of one of the Contracting Parties in the territory of the other shall be accorded fair and equitable treatment.

Such treatment shall be at least equal to that granted by each Party to its nationals or, if it is more favourable, to the treatment accorded to the nationals or companies of the most favoured nation.

Article 3. Each Contracting Party shall undertake to authorize the transfer of the proceeds of the work or activity carried out in its territory by the nationals or companies of the other Party, as well as the transfer of profits, interest payments, dividends, royalties and other income, amortization payments and, in the event of partial or total liquidation, of the proceeds of such liquidation.

¹ Applied provisionally from 10 March 1972, the date of signature, and came into force definitively on 10 May 1973, when the Contracting Parties had notified each other of the fulfilment of their constitutional requirements, in accordance with article 8(1).

The technical formalities for the transfer shall be satisfied in accordance with existing legislation on the subject.

Article 4. In the event of expropriation, nationalization or dispossession by one Contracting Party of the property, rights or interests of nationals or companies of the other Contracting Party, it shall pay those nationals or companies effective and equitable compensation in conformity with international law.

Measures of expropriation, nationalization or dispossession shall be neither discriminatory nor contrary to a specific undertaking.

The amount of the compensation, which shall be fixed at the time of the expropriation, nationalization or dispossession, shall be expressed in a convertible currency and paid within a reasonable time to the beneficiary, whatever his place of residence or place of business.

Article 5. This Agreement shall also apply to investments made by the nationals or companies of either Contracting Party in the territory of the other Contracting Party before the entry into force of this Agreement, provided that such investments have received written approval in accordance with the laws and regulations on investments in force in the territory in which they were made.

Article 6. If a dispute arises between the Contracting Parties regarding the interpretation or implementation of this Agreement and if the dispute cannot be settled satisfactorily within a period of six months through the diplomatic channel, it shall be submitted, at the request of either of the Parties, to an arbitral tribunal of three members. Each Party shall designate an arbitrator. The two arbitrators so designated shall appoint a presiding arbitrator, who shall be a national of a third State.

If one of the Parties has not designated its arbitrator and has not acted on the invitation from the other Party to do so within two months, the arbitrator shall be appointed, at the request of the latter Party, by the President of the International Court of Justice.

If the two arbitrators cannot agree, within the two months following their designation, on the choice of a presiding arbitrator, the latter shall be appointed, at the request of one of the Parties, by the President of the International Court of Justice.

If, in the cases referred to in the second and third paragraphs of this article, the President of the International Court of Justice is unable to act or is a national of one of the Parties, the appointments shall be made by the Vice-President. If the latter is unable to act or if he is a national of one of the Parties, the appointments shall be made by the most senior member of the Court who is a national of neither of the Parties.

Unless the Parties agree otherwise, the tribunal shall establish its own rules of procedure.

The decisions of the tribunal shall be binding on the Parties.

Article 7. A mixed commission, composed of representatives of the Contracting Parties to this Agreement, shall meet at either Berne or Kinshasa at the request of one of the Contracting Parties to assess the results achieved under this Agreement and possible methods to be adopted in order subsequently to promote investments by one of the Contracting Parties in the territory of the other Party.

Article 8. This Agreement, which shall be applicable provisionally from the time of its signature, shall enter into force when one of the Contracting Parties has notified the other that it has complied with its constitutional provisions regarding the conclusion and implementation of international agreements.

This Agreement shall remain in force for five years. It shall be tacitly renewed for successive periods of two years, unless notice of termination is given in writing by either Contracting Party six months before its expiration.

In the event of termination, the provisions of this Agreement shall continue to apply for five years to investments made before the date of expiration.

DONE at Kinshasa, on 10 March 1972, in two original copies in the French language.

For the Government
of the Swiss Confederation :

E. MOSER

For the Government
of the Republic of Zaire :

EKETEBI MOYIDIBA MONDJOLOMBA
