No. 13676

SWITZERLAND
and
EGYPT

Agreement concerning the encouragement and reciprocal protection of investments (with exchanges of letters). Signed at Cairo on 25 July 1973

Authentic texts: English, French and Arabic.

Registered by Switzerland on 27 November 1974.

SUISSE
et
ÉGYPTE

Convention concernant l'encouragement et la protection réciproque des investissements (avec échanges de lettres). Signé au Caire le 25 juillet 1973

Textes authentiques : anglais, français et arabe.

Enregistrée par la Suisse le 27 novembre 1974.

AGREEMENT[1] BETWEEN THE SWISS CONFEDERATION AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Swiss Confederation and the Government of the Arab Republic of Egypt,

Desiring to strengthen the economic co-operation between both Countries,

Intending to create favourable conditions for investments by nationals and companies of either Country in the territory of the other Country and thus to intensify the co-operation in the fields of production, commerce, tourism and technology,

Recognizing that encouragement and protection of such investments are apt to stimulate the flow of capital to the benefit of the economic prosperity of both Countries,

Have agreed as follows:

Article 1. For the purpose of this Agreement:

1. The term "Nationals" shall mean:

Physical persons who, according to the respective legislation of each Contracting Party, are considered citizens of that Country.

2. The term "Companies" shall mean:

Companies, institutions or foundations with legal personality, as well as partnership firms or limited partnerships and other associations without legal personality, in which nationals of either Contracting Party have a substantial interest.

3. The term "Investments" shall mean:

Every kind of asset accepted in accordance with the respective prevailing legislation of either Contracting Party, in particular though not exclusively:

a. movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

b. shares or other kinds of interest in companies;

c. claims to money utilized with the purpose of creating an economic value;

d. copyrights, industrial property rights, technical processes, know-how, trade-marks and trade-names;

e. business concessions under public law, including concessions to search for, extract or exploit natural resources.

4. The term "Returns" shall mean:

The amounts yielded by an investment for a specific period as net profits or interests.

Article 2. Either Contracting Party shall promote in its territory as far as possible investments by nationals or companies of the other Contracting Party.

Either Contracting Party may, however, subject investments to prior formal approval in accordance with its respective legislation.

[1] Came into force on 4 June 1974 by the exchange of instruments of ratification, which took place at Bern, in accordance with article 13.

Article 3. Either Contracting Party shall protect within its territory the investments by nationals or companies of the other Contracting Party and shall ensure fair and equitable treatment to such investments.

This treatment shall be at least equal to that granted by each Contracting Party to its own nationals or companies or equal to the treatment granted to nationals or companies of the most favoured nation if the latter is more favourable.

The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals and 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 4. Either Contracting Party shall not impair the management, maintenance, use, enjoyment, extension and, should it so happen, liquidation of such investments.

In particular, either Contracting Party shall facilitate in its territory such investments and shall grant to that effect the necessary permits, including permits for the implementation of manufacturing agreements, for technical, commercial or administrative assistance, as well as for the employment of consultants and other qualified personnel of the other Contracting Party or of a Third State, all in accordance with its respective legislation.

However, either Contracting Party may refuse employment permits for security reasons.

Article 5. Either Contracting Party shall in respect of investments by nationals or companies of the other Contracting Party grant to those nationals or companies the free transfer of:

1. returns;
2. royalties deriving from incorporeal rights as defined in article 1, item 3, letters *d* and *e*;
3. instalments in repayment of loans;
4. amounts spent for the management of the investment in the territory of the other Contracting Party or a Third State;
5. additional funds necessary for the maintenance of the investment;
6. payments for technical, commercial or administrative assistance in the sense of article 4, paragraph 2;
7. the value of partial or total liquidation of the investment.

Article 6. Neither Contracting Party shall take any measure of expropriation, nationalisation or dispossession, either direct or indirect, against investments by nationals or companies of the other Contracting Party, except under due process of law and provided that provisions be made for effective and adequate compensation.

Such compensation shall be fixed at the date of expropriation, nationalisation or dispossession. It shall be settled in the currency of the country of origin of the investment and shall be paid to the investor without undue delay.

Article 7. In case one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or a company in the territory of the other Contracting Party, the latter shall recognize the subrogation by assignment of the grantor to the rights of the investor as to damage, if payment has been made under that security to the extent of that payment and within the rights of the investor.

Article 8. The present Agreement shall also apply to investments by nationals or companies of either Contracting Party made prior to the entering into force of this

Agreement and accepted in accordance with the respective prevailing legislation of either Contracting Party.

Article 9. In case either Contracting Party has agreed upon more favourable terms with nationals or companies of the other Contracting Party, such terms shall supersede those specified in this Agreement.

Article 10. The Contracting Parties shall try to settle any difference of opinion regarding the interpretation or application of this Agreement by means of negotiation.

If no agreement can be reached, either Contracting Party may submit the dispute to an Arbitral Tribunal. Such Arbitral Tribunal shall consist of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who must be a national of a Third State. If either Contracting Party has not appointed its arbitrator within two months from the date on which either Contracting Party has informed the other Contracting Party that it wished to submit the dispute to an Arbitral Tribunal, the other Contracting Party may invite the President of the International Court of Justice to make that appointment. If the two arbitrators cannot agree upon the chairman within two months from the date of the second appointment, either Contracting Party may invite the President of the International Court of Justice to nominate the chairman.

If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said functions, the Vice-President will be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said functions, the next senior member of the International Court of Justice who is not a national of either Contracting Party and is not prevented from discharging the said functions, will be invited to make the necessary appointments.

Unless the Contracting Parties decide otherwise, the Arbitral Tribunal shall determine its own procedure.

The Arbitral Tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding on the Contracting Parties.

Article 11. In conformity with international law local judicial remedies have to be exhausted before any dispute can be submitted to international judicial authorities.

Article 12. The Contracting Parties have exchanged four letters (No. I — IV) as annexed hereinafter.

The letter No. I referring to article 1, item 2, and the letter No. IV referring to article 8 constitute an integral part of the present Agreement.

Article 13. The present Agreement shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible in Berne.

The Agreement shall enter into force on the date of the exchange of the instruments of ratification. It shall be in force for a period of five years and, unless either Contracting Party terminates the Agreement, shall remain in force for another five years' term and so forth.

If either Contracting Party wishes to terminate the Agreement, it may do so by giving an official notice in writing to the other Contracting Party six months before the expiration of each five years' term.

In case official notice of termination of this Agreement is given, the provisions of articles 1 to 12 shall continue to be effective for a further period of five years in respect of investments made prior to the date of official notice.

DONE at Cairo this day of 25th July 1973, in duplicate, in English, French and Arabic, the English text being authentic.

For the Government
of the Swiss Confederation:
[*Signed - Signé*][1]

For the Government
of the Arab Republic of Egypt:
[*Signed - Signé*][2]

EXCHANGES OF LETTERS

I*a*

THE CHAIRMAN OF THE SWISS DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

Referring to article 1, item 2, of the Agreement between the Swiss Confederation and the Arab Republic of Egypt concerning the encouragement and reciprocal protection of investments, signed today, I have the honour to draw your attention to the following point.

Notwithstanding article 1, item 2, each Contracting Party may reserve the right to deny the benefit of the present Agreement to any company in which nationals or companies of a Third Country have a substantial interest.

Both Contracting Parties shall come to an understanding in each case with regard to whether the interest held by nationals of either Contracting Party is a substantial interest permitting to exercise control or decisive influence on the company. Should such an understanding not be reached, the case shall be settled under article 10.

I should appreciate it, if you would confirm to me that you agree to the content of this letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
Dr. H. K. FREY
Ambassador of Switzerland

His Excellency Dr. Abdel Aziz Hegazi
Deputy Prime Minister and Minister for Finance,
Economy and Foreign Trade
Chairman of the Egyptian Delegation
Cairo

[1] Signed by H. K. Frey — Signé par H. K. Frey.
[2] Signed by Abdel Aziz Hegazi — Signé par Abdel Aziz Hegazi.

II*a*

THE CHAIRMAN OF THE EGYPTIAN DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

I have the honour to acknowledge receipt of your letter of today, which reads as follows:

[*See letter I*a]

I have the honour to confirm to you that I agree to the content of your letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
Dr. ABDEL AZIZ HEGAZI
Deputy Prime Minister and Minister
for Finance, Economy and Foreign Trade

His Excellency Dr. Hans Karl Frey
Ambassador of Switzerland
Chairman of the Swiss Delegation
Cairo

I*b*

THE CHAIRMAN OF THE EGYPTIAN DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

Referring to article 2, paragraph 2 of the Agreement between the Arab Republic of Egypt and the Swiss Confederation concerning the encouragement and reciprocal protection of investments, signed today, I have the honour to outline the procedure to be followed for foreign investments in the Arab Republic of Egypt:

1. Applications for new foreign investments should be submitted to the General Authority for Investment of Arab Funds and Free Zones.

2. If the proposed investment is qualified for approval under the terms of Law No. 65/1971 concerning the Investment of Arab Funds and the Free Zones, the application should be made according to the procedure laid down in the Executive Regulations relating to that law. If the investment is approved, it will be registered in the books of the Authority. A certificate to this effect will be issued, and the investment will therefore enjoy all facilities provided for by the said law.

3. Applications for investments other than those regulated by Law No. 65/1971 should formally be submitted to the same Authority for approval. If such application is approved, the relative investment will be carried out in compliance with the respective laws and regulations, without, however, enjoying the facilities provided for by Law No. 65/1971.

4. If a Registration certificate in respect of investments regulated by Law No. 65/1971 is issued, or if the Authority has given its approval to other investments, both kinds

of investments shall be considered to have been accepted in accordance with the respective legislation in the Arab Republic of Egypt.

I should appreciate it, if you would confirm to me that you have taken note of the content of this letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
Dr. ABDEL AZIZ HEGAZI
Deputy Prime Minister and Minister
for Finance, Economy and Foreign Trade

His Excellency Dr. Hans Karl Frey
Ambassador of Switzerland
Chairman of the Swiss Delegation
Cairo

II*b*

THE CHAIRMAN OF THE SWISS DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

I have the honour to acknowledge receipt of your letter of today, which reads as follows:

[*See letter I*b]

I have the honour to confirm to you that I have taken note of the content of your letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
Dr. H. K. FREY
Ambassador of Switzerland

His Excellency Dr. Abdel Aziz Hegazi
Deputy Prime Minister and Minister for Finance,
Economy and Foreign Trade
Chairman of the Egyptian Delegation
Cairo

I*c*

THE CHAIRMAN OF THE EGYPTIAN DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

Referring to article 5, item 4 of the Agreement between the Arab Republic of Egypt and the Swiss Confederation concerning the encouragement and reciprocal protection of investments, signed today, I have the honour to declare that according to the principles

observed by the relevant authorities of the Arab Republic of Egypt, the amounts spent by the investors in Switzerland or in a Third State for the management of their investment in the Arab Republic of Egypt are not remittable unless the investment realizes net profits at the yearly close of business up to the extent of those expenses.

If, however, the investment does not realize profits up to the amount claimed, any unremitted amounts may be carried forward for the following years and will be remitted as and when the investment realizes net profit sufficient to meet this liability.

I should appreciate it, if you would confirm to me that you have taken note of the content of this letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
DR. ABDEL AZIZ HEGAZI
Deputy Prime Minister and Minister
for Finance, Economy and Foreign Trade

His Excellency Dr. Hans Karl Frey
Ambassador of Switzerland
Chairman of the Swiss Delegation
Cairo

IIc

THE CHAIRMAN OF THE SWISS DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

I have the honour to acknowledge receipt of your letter of today, which reads as follows:

[*See letter Ic*]

I have the honour to confirm to you that I have taken note of the content of your letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
DR. H. K. FREY
Ambassador of Switzerland

His Excellency Dr. Abdel Aziz Hegazi
Deputy Prime Minister and Minister for
Finance, Economy and Foreign Trade
Chairman of the Egyptian Delegation
Cairo

I*d*

THE CHAIRMAN OF THE EGYPTIAN DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

Referring to article 8 of the Agreement between the Arab Republic of Egypt and the Swiss Confederation concerning the encouragement and reciprocal protection of investments, signed today, I have the honour to draw your attention to the following matter.

Property owned by nationals or companies of either Contracting Party which are not considered investments as defined in article 1, item 3 of this Agreement, shall be treated by each Contracting Party in accordance with international law. In case of a dispute both Contracting Parties agree that such a dispute shall be submitted to the International Court of Justice.

I should appreciate it, if you would confirm to me that you agree to the content of this letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
DR. ABDEL AZIZ HEGAZI
Deputy Prime Minister and Minister
for Finance, Economy and Foreign Trade

His Excellency Dr. Hans Karl Frey
Ambassador of Switzerland
Chairman of the Swiss Delegation
Cairo

II*d*

THE CHAIRMAN OF THE SWISS DELEGATION

Cairo, 25th July 1973

Mr. Chairman,

I have the honour to acknowledge receipt of your letter of today, which reads as follows:

[*See letter I*d]

I have the honour to confirm to you that I agree to the content of your letter.

Accept, Mr. Chairman, the assurance of my high consideration.

[*Signed*]
DR. H. K. FREY
Ambassador of Switzerland

His Excellency Dr. Abdel Aziz Hegazi
Deputy Prime Minister and Minister for
Finance, Economy and Foreign Trade
Chairman of the Egyptian Delegation
Cairo