

No. 14682

**SWITZERLAND
and
SUDAN**

**Agreement concerning the encouragement and reciprocal
protection of investments (with exchange of letters).
Signed at Khartoum on 17 February 1974**

Authentic texts of the Agreement: French and English.

Authentic text of the exchange of letters: English.

Registered by Switzerland on 25 March 1976.

**SUISSE
et
SOUDAN**

**Convention concernant l'encouragement et la protection
réciproque des investissements (avec échange de let-
tres). Signée à Khartoum le 17 février 1974**

Textes authentiques de l'Accord : français et anglais.

Texte authentique de l'échange de lettres : anglais.

Enregistrée par la Suisse le 25 mars 1976.

AGREEMENT¹ BETWEEN THE SWISS CONFEDERATION AND THE DEMOCRATIC REPUBLIC OF THE SUDAN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Swiss Confederation and the Government of the Democratic Republic of the Sudan,

Bearing in mind the friendly relations existing between the two countries and desiring to strengthen and intensify those ties,

Intending to create favourable conditions for investments in both countries and thus to develop the cooperation between them in the field of production, commerce, tourism, technology and in any other field of cooperation,

Recognizing that encouragement and protection of such investments by nationals or companies of both countries 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, either directly or indirectly.

3. The term "Investment" shall mean: Every kind of asset belonging to nationals or companies of either Contracting Party and established in accordance with its legislation, 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 interests in companies;
- c) claims to money or to any performance having an economic value other than goodwill;
- d) copyrights, industrial property rights, technical processes, know-how, trademarks and business-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 as net profits, interests or royalties.

¹ Came into force on 14 December 1974 by the exchange of the instruments of ratification, which took place at Khartoum, in accordance with article 12.

Article 2. Either Contracting Party shall promote in its territory as far as possible investments by nationals or companies of the other Contracting Party and shall admit such investments in accordance with its respective legislation.

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 by unreasonable or discriminatory measures 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.

However, either Contracting Party may refuse entry or 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 transfer of:

1. returns as defined in Article 1, item 4;
2. instalments in repayment of loans;
3. amounts spent for the management of the investment in the territory of the other Contracting Party or a Third State;
4. additional funds necessary for the maintenance and the development of the investment;
5. payments for technical, commercial or administrative assistance;
6. the proceeds of partial or total liquidation of the investment including possible increment values.

Article 6. Neither Contracting Party shall take any measure of expropriation, nationalization 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.

The amount of compensation shall be fixed at the date of expropriation, nationalization 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, it being clearly understood that this Agreement shall not apply to investments which belonged to nationals or companies of either Contracting Party and which have been subject to a measure of expropriation, nationalization or dispossession.

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. The Contracting Parties have exchanged the attached Letter referring to Article 1, item 2, hereinbefore.

This Letter constitutes an integral part of the present Agreement.

Article 12. The present Agreement shall be subject to ratification, and the instrument of ratification shall be exchanged as soon as possible in Khartoum.

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 expiration of each five years' term.

In case official notice of termination of this Agreement is given, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years in respect of investments made prior to the date of termination.

IN WITNESS WHEREOF the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Khartoum this day of 17th February, 1974, in duplicate, in French and English, the English text being the authentic text.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For the Government
of the Democratic Republic
of the Sudan:

[Signed — Signé]²

¹ Signed by H. K. Frey — Signé par H. K. Frey.

² Signed by Nasr El Din Mubarak — Signé par Nasr El Din Mubarak.

EXCHANGE OF LETTERS — ÉCHANGE DE LETTRES

I

THE CHAIRMAN OF THE SWISS DELEGATION

Khartoum, February 17th, 1974

Mr. Chairman,

Referring to Article 1, item 2, of the Agreement between the Swiss Confederation and the Democratic Republic of the Sudan concerning the Encouragement and Reciprocal Protection of Investments, signed today, I have the honour to inform you as follows:

Nationals of either Contracting Party are considered having a substantial interest if they exercise decisive influence on a company, either directly or through another company. In the event that a Contracting Party denies that such an influence is exercised by nationals of the other Contracting Party, it will inform the latter accordingly. Both Contracting Parties will then try to come to an understanding as to whether the interest held by nationals of the first Contracting Party is a substantial one. Should such an understanding not be reached, the difference shall be settled by the Arbitral Tribunal set up in Article 10 of this Agreement.

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]

HANS KARL FREY
Ambassador of Switzerland

Nasr El Din El Mubarak
Director General of the National Planning Commission
Chairman of the Sudanese Delegation
Khartoum

[TRADUCTION — TRANSLATION]

LE PRÉSIDENT DE LA DÉLÉGATION SUISSE

Khartoum, le 17 février 1974

Monsieur le Président,

[*Voir lettre II*]

Veuillez agréer, etc.

[*Signé*]

HANS KARL FREY
Ambassadeur de Suisse

Nasr El Din El Mubarak
Directeur général de la Commission
de la Planification nationale
Président de la Délégation soudanaise
Khartoum

II

THE CHAIRMAN OF THE SUDANESE DELEGATION

Khartoum, February 17th, 1974

Dear Chairman,

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

[*See note I*]

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*]

NASR EL DIN EL MUBARAK
Director General
of the National Planning Commission

Hans Karl Frey
Ambassador of Switzerland
Chairman of the Swiss Delegation
Khartoum