

No. 16749

**SINGAPORE
and
SWITZERLAND**

**Agreement on the reciprocal promotion and protection of
investments (with exchange of letters). Signed at
Singapore on 6 March 1978**

Authentic texts: English and German.

Registered by Singapore on 14 June 1978.

**SINGAPOUR
et
SUISSE**

**Convention concernant l'encouragement et la protection
réciproque des investissements (avec échange de
lettres). Signé à Singapour le 6 mars 1978**

Textes authentiques : anglais et allemand.

Enregistrée par Singapour le 14 juin 1978.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE SWISS CONFEDERATION ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Swiss Federal Council, Desirous of strengthening economic co-operation between both States,

Intending to create favourable conditions for capital investments by nationals and companies of each State in the territory of the other and to intensify co-operation between nationals and companies of both States in the fields of science, technology, industry and commerce,

Recognising the need to protect investments by nationals and companies of both States and to stimulate the flow of capital with a view to increasing the economic prosperity of both States,

Have agreed as follows:

Article 1. (1) Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit, within the framework of its economic policy, such investments in accordance with its laws and regulations.

(2) The making of investments by nationals or companies of one Contracting Party in the territory of the other Contracting Party shall comply with such admission procedure as may be established by that other Contracting Party. Only an investment so admitted and, to the extent that a written approval is required, specifically approved in writing by that other Contracting Party as an admitted investment shall enjoy the benefits and protection of this Agreement.

Article 2. (1) Each Contracting Party shall protect within its territory investments of nationals or companies of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, selling or, should it so happen, the liquidation of such investments. In particular, each Contracting Party shall endeavour to grant the necessary permits and licences for all activities concerned with the management, promotion and personnel requirement of such investments.

(2) Each Contracting Party shall in particular ensure fair and equitable treatment within its territory to investments of nationals or companies of the other Contracting Party. Unless otherwise provided by the legislation in force at the time when the investment is being made or, to the extent that a document of admission is required, provided by specific stipulations in the document of admission, investments by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be subject to treatment less favourable than that accorded to investments by nationals or companies of the other Contracting Party or to investments by 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 or companies of a third State because of its

¹ Came into force on 3 May 1978, the date on which each Contracting Party notified the other of the completion of its constitutional requirements, in accordance with article 10 (1).

membership in, or association with, a customs union, a common market or a free trade area.

Article 3. Each Contracting Party, in the territory of which investments have been made by nationals or companies of the other Contracting Party, shall grant to those nationals or companies the free transfer into and out of its territory:

- (a) Of interest, dividends, benefits and other current returns;
- (b) Of amortization and contractual repayments;
- (c) Of sums required for the management of the investments;
- (d) Of additional contributions of capital necessary for the maintenance or development of the investments;
- (e) Of royalties and other payments deriving from rights of licence and commercial, administrative or technical assistance;
- (f) Of the proceeds of selling or partial or total liquidation of capital, including any increment value.

Article 4. Neither Contracting Party shall take any measure of expropriation, nationalization or dispossession, either directly or indirectly, against the investment of nationals or companies of the other Contracting Party unless the measures are taken in the public interest or unless they are authorised by an Act of Parliament in force at the time of approval of the investment, as the case may be, on a non-discriminatory basis, and under due process of law provided that effective and adequate compensation is made therefor. Such compensation shall be paid without undue delay to the person entitled thereto and shall be freely convertible and transferable.

Article 5. Subject to article 1, paragraph 2, hereof, this Agreement shall apply to all investments by nationals or companies of one Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement.

Article 6. This Agreement shall not supersede any provisions more favourable than those of this Agreement which have been agreed upon by either of the Contracting Parties with nationals or companies of the other Contracting Party.

Article 7. Where one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or company in the territory of the other Contracting Party and payment has been made by the first Contracting Party to its own national or company, the other Contracting Party shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor.

Article 8. For the purpose of this Agreement:

- (a) "Nationals" are physical persons, who, according to the law of each Contracting Party, are considered to be citizens of that Contracting Party.
- (b) "Companies" are:
 - (i) With respect to the Swiss Confederation, companies, institutions or foundations with legal personality as well as partnership firms or limited partnerships and other associations without legal personality, incorporated under Swiss law or in which Swiss nationals have at all times directly or indirectly a majority interest;

(ii) With respect to the Republic of Singapore, all companies, firms or associations incorporated or constituted under the law in force in the Republic of Singapore or in which citizens of Singapore have at all times directly or indirectly a majority interest.

(c) "Investment" shall comprise investment of every description, including every kind of asset, and more particularly but not exclusively:

- (i) All movable and immovable property and all rights, titles, interest and claims into and over such property, such as mortgages, loans, pledges, usufructs, and similar rights;
- (ii) Stock shares and securities and other interests in companies;
- (iii) Titles to money or other choses in action or rights to any performance having an economic value;
- (iv) Copyrights, industrial property rights (such as patents for inventions, trademarks, industrial design), know-how, trade names and goodwill;
- (v) Business concessions under public law, including concessions to search for, extract or exploit natural resources.

(d) "Returns" shall mean the amounts yielded by an investment as net profit for a specific period.

Article 9. (1) Disputes as to the interpretation or application of the provisions of this Agreement shall be settled by means of diplomatic negotiations.

(2) If both Contracting Parties cannot reach an agreement within six months, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal consisting 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 Contracting Party 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 other Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot come to an agreement about the choice of the chairman within two months after their appointments, 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 so prevented or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party and is not prevented from carrying out the said function.

(6) Subject to such provisions as may be agreed upon by the Contracting Parties, the tribunal shall determine its own procedure.

(7) The decisions of the tribunal are binding on each Contracting Party.

Article 10. (1) This Agreement shall come into force on the day when each Contracting Party shall have notified the other that it has complied with the constitutional requirements for the conclusion and entry into force of international

agreements and shall remain binding for a period of four years. Unless written notice of termination of not less than six months before the expiration of this period is given, it shall be considered as automatically renewed for further periods of two years at a time, subject also to termination by notice given by either Contracting Party not less than six months prior to the end of any such two-year period.

(2) Where official notice as to the termination of this Agreement has been given in pursuance of the preceding paragraph, the provisions of articles 1 to 9 shall continue to be effective for a further period of ten years for investments made before official notice was given. If proceedings are taken before or within one year after the expiry of the said extended period of ten years, article 9 shall continue to apply to such disputes.

DONE at Singapore this 6th March, 1978, in two originals each in the English and German languages, both texts being equally authoritative, but in the case of divergence, the English text shall prevail.

NGIAM TONG DOW
For the Government
of the Republic of Singapore

Dr. KLAUS JACOBI
For the Swiss Federal Council

EXCHANGE OF LETTERS

I

Date: 6th March 1978

Excellency,

With reference to the Agreement between the Government of the Republic of Singapore and the Government of the Swiss Confederation concerning the Promotion and the Protection of Investments signed today, I have the honour to state that it is an understanding between the Parties that matters of taxation in the territories of both Parties fall outside the scope of the said Agreement and that such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Parties and the domestic laws of each Party.

Please let me have your confirmation that the above correctly sets out the understanding between the two Parties.

I propose that the expression "majority interest" in article 8(b)(i) be defined as "ownership by Swiss nationals, either directly or indirectly, for instance, through another company, of not less than fifty-one per cent (51 %) of the equity of a company admitted or sought to be admitted to the benefits and protection of the said Agreement; provided always that such part, if any, of the said equity as is owned by Singapore nationals, either directly or indirectly, shall not be protected under the said Agreement".

Accept, Excellency, the renewed assurances of my highest consideration.

NGIAM TONG DOW
For and on behalf of the Government
of the Republic of Singapore

His Excellency Dr. Klaus Jacobi
Swiss Federal Council

II

Date: 6th March 1978

Excellency,

I have the honour to acknowledge the receipt of your letter dated 6th March 1978, paragraphs 1 and 2 of which read as follows:

[See letter I]

I confirm the above understanding between the two Parties.

I agree to the proposal stated in the third paragraph of your letter only for the purposes of the said Agreement and on the understanding that the definition of Swiss companies in article 8(b)(i) resulting from the application of your definition of “majority interest” does not bind the Government of the Swiss Confederation in respect of any matter falling outside the scope of the said Agreement. Under the existing Swiss policy governing the granting of diplomatic protection to Swiss companies, Swiss nationals are considered as having a controlling interest if they exercise a decisive influence on a company, either directly or indirectly, for instance through another company. In order to establish whether such influence exists, account shall be taken of the participation held by Swiss nationals in the capital of the company, of the part they take in the decision making bodies of the company and of all other elements which make it clear that Swiss nationals control the company.

Accept, Excellency, the renewed assurances of my highest consideration.

DR. KLAUS JACOBI
For and on behalf of the Government
of the Swiss Confederation

His Excellency Ngiam Tong Dow
Republic of Singapore
