

# Treaty between the Federal Republic of Germany and the Republic of Kazakhstan on the Promotion and Mutual Protection of Capital Investments

The Federal Republic of Germany and the Republic of Kazakhstan -

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. The term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Concessions, including concession and concession concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Republic of Kazakhstan:

Natural persons who are nationals of the Republic of Kazakhstan under the legislation;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) As regards the Republic of Kazakhstan:

Any legal person, company, company, company and other organization established in the territory of the Republic of Kazakhstan.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments by nationals or companies of a Contracting Party may be carried out in the territory of the other Contracting Parties only for the general good and for compensation for expropriation, including nationalization or others

Measures which, in their effects, are equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the day on which the actual or imminent expropriation, including nationalization or other similar measures, became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the day of payment; It must in fact be usable and freely transferable. At the latest on the day of expropriation, nationalization or comparable measure, it shall be appropriate for the fixing and performance of the indemnities. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

a) Of the capital and additional amounts for the maintenance or expansion of the investment;

b) Of income;

- c) To repay loans;
- d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;
- e) Of the compensation provided for in Article 4.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7.**

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the rate valid on the date of the transfer.

(2) This rate must correspond to the cross-rate resulting from the conversion rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 9.**

This contract shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty.

## **Article 10.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next member of the court, who is not a national of one of the two contracting parties, shall make the honors.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the

other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) In view of Article 27 (1) of the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the dispute referred to in Article 10 (2) to (5) of this Treaty can not be appealed for a dispute as long as the Company of a Contracting Party and the other Contracting Party has concluded an agreement in accordance with Article 25 of the Convention. The possibility of appealing to the arbitral tribunal provided for in Article 10 (2) to (5) of this Treaty in the event of failure to comply with a decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by force or law pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

This Agreement shall be governed by a Protocol and a bill of exchange which are inseparable constituents thereof.

## **Article 14.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Alma Ata.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at Bonn, September 22, 1992, in two originals, each in the German, Kazakh and Russian languages, each text being authentic. In the event of a difference in interpretation between the German and Kazakh texts, the Russian text shall prevail.

For the Federal Republic of Germany

Dr. Dieter Kastrup,

Dr. Dieter von Würzen

For the Republic of Kazakhstan

## Protocol

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Kazakhstan on the promotion and mutual protection of capital investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be deemed inseparable parts of the Treaty:

### (1) Ad Article 1

(a) The income from the investment and, in the case of reinvestment, the income therefrom, shall enjoy the same protection as the investment.

(b) In particular, without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of a Contracting Party shall be deemed to be a national of that Party.

### (2) Ad Article 2

(a) Investments made in accordance with the laws of a Contracting Party within the scope of application of its legal system by nationals or companies of the other Contracting Party shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that the national law of the respective Contracting Party permits the exercise of sovereign rights or powers in these areas.

### (3) Ad Article 3

(a) The Republic of Kazakhstan reserves the right to make or maintain limited exceptions to national treatment in the following areas:

- Ownership of land, land resources, water resources, fauna and flora and other natural resources;
- Acquisition of immovable property (during the transition to a market economy);
- Ownership of television and radio stations;
- air transport;
- stock exchange transactions in state securities of the Republic of Kazakhstan.

(b) For the purposes of Article 3(2), "operation" shall mean, in particular, but not exclusively, the management, use, enjoyment, and enjoyment of capital investment. "Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, restrictions on the supply of raw materials and supplies, energy and fuels, and means of production and inputs of all kinds, obstruction of the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health, or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(c) The provisions of Article 3 shall not oblige a Party to extend to individuals and companies resident in the territory of the other Party tax benefits, exemptions and concessions which, under its tax laws, are available only to individuals and companies resident in its territory.

(d) The Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment of capital, and to workers of one Contracting Party who wish to enter and reside in the territory of the other Contracting Party in connection with an investment of capital in order to carry on activities as workers. Applications for work permits shall also be favorably considered.

### (4) Ad Article 4

A claim for compensation shall also exist if measures of one of the Contracting Parties interfere with the rights of the enterprise which is the subject of the capital investment and thereby substantially impair its economic substance.

### (5) Ad Article 5

Free transfer within the meaning of Article 5 shall comprise:

(a) The exchange of the amounts in national currency referred to in Article 5 into convertible currency and the subsequent export of such amounts in convertible currency;

(b) the export of monetary amounts generated in foreign currency.

(6) Ad Article 7

For the purposes of Article 7, paragraph 1, a transfer shall be deemed to have been effected without undue delay if it is effected within a period of time normally necessary for the observance of the transfer formalities. The period shall commence with the submission of an appropriate application and shall in no circumstances exceed two months.

(7) In the case of shipments of goods and persons related to a capital investment, a Party shall neither eliminate nor impede the carriers of the other Party and shall, to the extent necessary, duly authorize the transportation.

This includes shipments of:

a) goods directly intended for investment within the meaning of the Treaty or acquired in the territory of a Contracting Party or of a third State by or on behalf of an enterprise in which assets within the meaning of the Treaty are invested;

b) persons traveling in connection with an investment.

(8) On the date of entry into force of the Treaty between the Federal Republic of Germany and the Republic of Kazakhstan on the Promotion and Reciprocal Protection of Investments, the Treaty of 13 June 1989 between the Federal Republic of Germany and the Union of Soviet Socialist Republics on the Promotion and Reciprocal Protection of Investments shall cease to apply in the relationship between the Federal Republic of Germany and the Republic of Kazakhstan.

Done at Bonn, September 22, 1992, in two originals, each in the German, Kazakh and Russian languages, each text being authentic. In the case of different interpretations of the German and Kazakh texts, the Russian text shall prevail.

For the Federal Republic of Germany

Dr. Dieter Kastrup,

Dr. Dieter von Würzen

For the Republic of Kazakhstan

Oleg Soskovez

## **Exchange of Letters**

The 1st Deputy Prime Minister of the Republic of Kazakhstan

Bonn, September 22, 1992

Your Excellency

On the occasion of signing the Treaty between the Republic of Kazakhstan and the Federal Republic of Germany on the promotion and mutual protection of capital investments, I have the honor to inform you of the following:

Pursuant to Article 29 of the Law of the Republic of Kazakhstan on Taxation of Enterprises, Associations and Organizations, income of foreign investors arising from distribution of profits of joint ventures is subject to taxation at the rate of 15% when transferred abroad, unless an international treaty of the Republic of Kazakhstan provides otherwise. The Government of the Republic of Kazakhstan confirms its intention to make this tax available during negotiations on the conclusion of a bilateral agreement between the Republic of Kazakhstan and the Federal Republic of Germany on the avoidance of double taxation, to be put up for discussion.

His Excellency

the Federal Minister of Foreign Affairs

Dr. Klaus Kinkel

The State Secretary of the Foreign Office

422-413.35 KAS

Bonn, September 22, 1992

Your Excellency

I have the honor to acknowledge receipt of your note of September 22, 1992, with the following content:

On the occasion of the signing of the Treaty between the Federal Republic of Germany and the Republic of Kazakhstan on the promotion and mutual protection of capital investments, I have the honor to inform you of the following:

In accordance with Article 29 of the Law of the Republic of Kazakhstan on Taxation of Enterprises, Associations and Organizations, income of foreign investors arising from distribution of profits of joint ventures is subject to taxation at the rate of 15 percent when transferred abroad, unless an international treaty of the Republic of Kazakhstan provides otherwise.

The Government of the Republic of Kazakhstan confirms its intention to make this tax available during negotiations on the conclusion of a bilateral agreement between the Federal Republic of Germany and the Republic of Kazakhstan on the avoidance of double taxation."

Please accept, Sir, the assurance of my highest consideration.

To His Excellency

the First Deputy Prime Minister of the Republic of Kazakhstan

Mr. Oleg Soskovez