

Treaty between the Federal Republic of Germany and the Republic of Guinea on the Promotion of Capital Investments

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF GUINEA

DESIRING to deepen economic cooperation between the two countries,

INCURRING to create favorable conditions for the investments of nationals and companies of one State in the territory of the other State,

RECOGNIZING that the promotion and the contractual protection of these investments are likely to stimulate private economic initiatives and increase the prosperity of the two peoples,

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall encourage by appropriate means the investment of capital in its territory by nationals and companies of the other Contracting Party, shall admit such investments in accordance with its legislation and shall give sympathetic consideration to the granting of the necessary authorizations. It shall treat such investments, in each case, in a fair and equitable manner.

Article 2.

No Contracting Party shall subject nationals and companies of the other Contracting Party, in its territory, in respect of investments owned by them or subject to their influence, in respect of the professional and economic activity which they carry on in connection with such investments, and in respect of the administration, enjoyment and use of such investments, to conditions less favourable than those to which its own nationals and companies or the nationals and companies of third States are subject.

Article 3.

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

(2) The nationals and companies of a Contracting Party may not be expropriated from their investments in the territory of the other Contracting Party except for reasons of public utility and in return for compensation. The compensation shall correspond to the value of the investment at the time of expropriation, shall be effectively realizable, freely transferable and shall be paid without delay. At the time of expropriation, at the latest, the compensation and the method of payment shall be determined. The legality of the expropriation and the amount of the compensation shall be subject to verification by ordinary judicial proceedings.

(3) Nationals and companies of a Contracting Party whose investments have been damaged by an armed conflict, revolution or riot in the territory of the other Contracting Party shall be treated by the other Contracting Party with respect to restitution, indemnity, compensation or other damages in a manner not less favourable than that accorded to the nationals and companies of that Party. With respect to the transfer of such payments, the Contracting Parties undertake mutually to accord to the nationals and companies of the other Contracting Party treatment no less favorable than that accorded in similar cases to the nationals and companies of a third State.

(4) The provisions of paragraphs 1, 2 and 3 above shall also apply to the proceeds of investments.

(5) With regard to matters governed by this Article, nationals and companies of a Contracting Party shall enjoy in the

territory of the other Contracting Party most-favoured-nation treatment.

Article 4.

Each Contracting Party shall guarantee to the nationals and companies of the other Contracting Party the transfer of the capital invested and the proceeds of such capital and, in the event of liquidation, the proceeds of the liquidation.

Article 5.

If a Contracting Party, by virtue of a guarantee given for an investment, makes payments to one of its nationals or to one of its companies, the other Contracting Party, without prejudice to the rights of the first Contracting Party under Article 10, shall recognize the transfer by operation of law or by contract of all the rights and claims of that national or company to the first Contracting Party and the subrogation in its favour of all such rights and claims. As regards the transfer of payments to be made to the Contracting Party by virtue of the transfer of rights, the provisions of Article 3(2), (3) and (4) and of Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) Insofar as the parties concerned have not concluded an arrangement to the contrary with the approval of the competent authorities of the Contracting Party in whose territory the investment is located, transfers under Article 3(2), (3) and (4), Article 4 or Article 5 shall be effected without delay and at the rate of exchange applicable on the date of the transfer for current transactions.

(2) The rate applicable to current transactions shall be based on the par value agreed upon with the International Monetary Fund and shall not exceed the margin of fluctuation permitted under Article IV, Section 3 of the Agreement on the International Monetary Fund on either side of the parity.

(3) If, for one of the Contracting Parties, there is no exchange rate within the meaning of paragraph 2 on the date of the transfer, the official rate fixed by that Contracting Party for its national currency in relation to the U.S. dollar or another freely convertible currency or to gold shall apply. If no such rate is fixed either, the competent authorities of the Contracting Party in whose territory the investment is situated shall accept a fair and equitable exchange rate.

Article 7.

If the legal provisions of one of the Contracting Parties or international obligations, now existing or to be established in the future between the Contracting Parties in addition to the present Treaty, provide for a regulation which accords to investments of nationals and companies of the other Contracting Party a more favorable treatment than that provided for in the present Treaty, the latter shall not affect the regulation in question. Each Contracting Party shall comply with any other commitments relating to investments by nationals or companies of the other Contracting Party to which it has subscribed.

Article 8.

(1) The term "investments" includes all categories of property, in particular, but not exclusively

- (a) ownership of movable and immovable property and all other rights in rem such as mortgages, pledges, usufruct, etc;
- b) rights of participation in companies and other kinds of participations;
- c) monetary claims or claims for services of economic value
- d) copyrights, industrial property rights, industrial processes, trade names and goodwill
- e) business concessions under public law, including concessions for research, extraction or exploitation of the earth's resources which give the holder a legal status of a certain duration.

Changes in the form in which assets are invested shall not affect their investment status.

(2) "Proceeds" means amounts paid as profit or interest on investments.

(3) "Nationals" means

- (a) in relation to the Federal Republic of Germany

Germans within the meaning of the Basic Law of the Federal Republic of Germany;

(b) in relation to the Republic of Guinea

persons enjoying the status of Guinean in accordance with the laws and regulations on Guinean nationality.

(4) "Companies" of a Contracting Party under this Treaty shall mean

any legal person as well as any trading company and any other company or association, with or without legal personality, having its seat in the territory of a Contracting Party and legally constituted in accordance with its legislation, irrespective of whether the liability of its partners, participants or members is limited or unlimited and whether its activity is for profit or not.

Article 9.

The provisions of this Treaty shall also apply to investments which nationals or companies of one of the Contracting Parties have made in the territory of the other Contracting Party, in accordance with the legislation of the latter, prior to the entry into force of this Treaty, but not before April 5, 1962.

Article 10.

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

(2) If a dispute cannot be settled in this manner, it shall be submitted to an arbitration tribunal at the request of either Contracting Party.

(3) The arbitration tribunal shall be constituted ad hoc; each Contracting Party shall appoint one member and the two members shall agree to select as chairman a national of a third State who shall be appointed by the Governments of both Contracting Parties. The members shall be appointed within two months and the chairman within three months after one of the Contracting Parties has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the time limits provided for in paragraph 3 are not observed and if no other arrangement is made, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties, or if he is prevented from doing so for any other reason, it shall be the duty of the Vice-President to make the appointments. If the Vice-President is also a national of one of the two Contracting Parties or if he is also prevented from acting, the next member of the Court who is not a national of one of the Contracting Parties shall make the appointments.

(5) The Arbitration Tribunal shall take its decisions by majority vote. Its decisions shall be binding. Each Contracting Party shall bear the costs of the arbitrator appointed by it and the costs of his defence in the proceedings before the arbitration tribunal; the costs of the chairman and the other costs shall be borne equally by the two Contracting Parties. The Arbitration Tribunal may make further regulations concerning the costs. The Arbitration Tribunal shall otherwise regulate its own procedure.

Article 11.

The provisions of this Treaty shall remain in force even in the event of disputes arising between the Contracting Parties, without prejudice to the right to take provisional measures admissible under the general rules of international law. Such measures shall be terminated at the latest at the time of the effective termination of the conflict, whether or not diplomatic relations have been restored.

Article 12.

With the exception of the provisions of paragraph 7 of the Protocol relating to air navigation, the present Treaty shall also apply to the Land of Berlin unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Government of the Republic of Guinea within three months after the entry into force of the present Treaty.

Article 13.

(1) This Treaty shall be ratified; the exchange of instruments of ratification shall take place as soon as possible in Conakry.

(2) This Treaty shall enter into force one month after the exchange of instruments of ratification. It shall remain in force for ten years and shall be extended for an indefinite period unless denounced in writing by either Contracting Party one year before its expiration.

At the expiration of the ten-year period, the Treaty may be terminated at any time, but shall remain in force for one year after termination.

(3) For investments made prior to the date of expiration of the Treaty, Articles 1 through 12 shall continue to apply for twenty years from the date of expiration of this Treaty.

DONE at Bonn, this 19th day of April, 1962, in four copies, two in the German and two in the French language, each text being equally authentic.

For the Federal Republic of Germany:

Lahr

For the Republic of Guinea:

Diakité

Protocol

WHEN SIGNING the Treaty on the Encouragement of Capital Investment between the Federal Republic of Germany and the Republic of Guinea, the undersigned Plenipotentiaries have further agreed upon the following arrangements which shall be considered as forming an integral part of the Treaty:

(1) The Contracting Parties declare their intention, in order to deepen their economic relations, to enter into negotiations for the conclusion of a Treaty of Establishment which shall regulate the following matters: entry and exit, temporary and permanent residence, protection against expulsion, admission to and exercise of economic and professional activities, establishment of enterprises without limitation of capital and participation in such enterprises, work permits for managerial and technical personnel, protection and security of person and property, free access to courts of law, freedom to conclude contracts, acquisition of real estate and other property, admission to the office of arbitrator.

(2) Ad Article 1

Each Contracting Party may, in accordance with its legal and regulatory provisions, decide within the framework of Article 1 whether it will grant a necessary authorization. If authorization is granted, the capital investment shall enjoy the full protection of this Treaty.

(3) Ad Article 2

(a) Each Contracting Party may, in the interest of its national economy, when admitting an investment made by nationals or companies of the other Contracting Party, agree with such nationals or companies in the act of admission to special conditions regarding

(a) the administration of the investment

(b) the economic activity

(c) the transfer of the invested capital and, in case of liquidation, the proceeds of the liquidation

d) reinvestment of the investment proceeds

e) the vocational training and employment of its own nationals.

To the extent that such terms are agreed, the provisions of Articles 2, 4 and 6 paragraph 1 of this Treaty shall not apply.

(b) The following in particular shall be considered as "less favourable conditions" within the meaning of Article 2: any restriction on the acquisition of raw and auxiliary materials, of motive power and fuel, and of means of production and operation of any kind, any impediment to the sale of products within the country and abroad, and any other measures

having similar effects. Measures taken for reasons of public order, public safety, public health or morality shall not be considered as "less favourable conditions" within the meaning of Article 2.

(c) Article 2 shall not apply to entry, residence and employment as an employee.

(4) Ad Article 3

The provisions of Article 3(2) shall also apply to the transfer of a capital investment into public ownership, its placing under public control or similar interventions by public authorities.

Expropriation" means the withdrawal or limitation by sovereign measure and on a scale equivalent to expropriation, of any property or right which, alone or together with other property or rights, constitutes a capital investment.

(5) Ad Article 4

Any disposition for the purpose of relinquishing all or part of the investment is also considered a "liquidation" within the meaning of section 4.

(6) Ad Article 6

Any transfer that takes place within the time period normally required for compliance with the transfer formalities shall be deemed to be effected "without delay" within the meaning of Article 6, paragraph 1 above. The time limit shall begin to run on the date on which a request for transfer is made and shall in no case exceed two months.

(7) Each Contracting Party shall refrain from taking any measures contrary to the principles of free competition and likely to eliminate or impede the participation of the maritime navigation of the other Contracting Party in the transport of goods intended for capital investment within the meaning of this Treaty. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds from an enterprise in which capital has been invested within the meaning of this Treaty.

Each Contracting Party shall refrain from taking any measure contrary to the principles of free competition and likely to eliminate or hinder the participation of aircraft of the other Contracting Party in the carriage of persons, baggage or cargo, if the carriage is carried out in connection with investments within the meaning of this Treaty. This provision shall also apply if the carriage is performed in the territory of a Contracting Party or between it and a third State on behalf of an enterprise in which capital has been invested within the meaning of this Treaty.

The amount of income from transportation shall be transferable in accordance with Article 6 of this Treaty.

(8) Without prejudice to other procedures for the determination of nationality, a person shall be deemed to be a national of a Contracting Party if he or she holds a national passport issued by the competent authorities of that Contracting Party.

DONE at Bonn, this 19th day of April 1962, in four copies, two in the German and two in the French language, each text being equally authentic.

For the Federal Republic of Germany

Lahr

For the Republic of Guinea:

Diakité

Exchange of Letters

The Chairman of the Guinean Delegation

Bonn, April 19, 1962

Dear Secretary of State

With reference to the Treaty signed today between the Republic of Guinea and the Federal Republic of Germany concerning the encouragement of capital investments, I have the honor to confirm that in the course of our negotiations an additional agreement has been reached on the following point:

"In order to facilitate the operations and encourage the development of capital investments made by German nationals or companies in Guinea, the Government of the Republic of Guinea, even before the entry into force of a Treaty of Establishment, the negotiation of which is envisaged, will grant to German nationals who in connection with capital investments made by German nationals or companies, who wish to enter, reside and/or work as an employee in the Republic of Guinea, shall be granted the necessary authorizations, unless reasons of public order, safety, health or morality prevent it. "

I would be grateful if you could confirm this agreement.

Please accept, Mr. Secretary of State, the expression of my highest consideration.

Diakité

His Excellency

The State Secretary in the Ministry of Foreign Affairs of the Federal Republic of Germany

Mr. Rolf Lahr

Bonn

The State Secretary at the Foreign Office

Bonn, April 19, 1962

Your Excellency,

I have the honor to acknowledge receipt of your letter of today's date, which - in agreed translation - reads as follows:

"With reference to the agreement signed today between the Republic of Guinea and the Federal Republic of Germany concerning the promotion of the investment of capital, I have the honor to confirm that during our negotiations additional agreement was reached on the following:

"With the intention of facilitating and encouraging the making and development of capital investments by German nationals and companies in Guinea, the Government of the Republic of Guinea will, even before the entry into force of an Establishment Agreement on the conclusion of which negotiations are envisaged, grant German nationals, German citizens who wish to enter and reside in the Republic of Guinea in connection with capital investments of German citizens and companies and/or who exercise an activity as an employee, the necessary permits, insofar as there are no reasons of public order, security, public health and morality to the contrary.

I would be grateful if you would confirm this agreement."

I have the honor to confirm the above agreement.

Please accept, Your Excellency, the expression of my highest consideration.

His Excellency

Minister Moussa Diakité

Governor of the Central Bank of Guinea

Lahr