

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF MALI CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF CAPITAL INVESTMENT

The Federal Republic of Germany and the Republic of Mali,

Desiring to intensify economic co-operation between the two States,

Seeking to create favourable conditions for capital investment by nationals or companies of either State in the territory of the other State, and

Recognizing that the encouragement and contractual protection of such investment are necessary for the prosperity of both nations,

Have agreed as follows:

Article 1.

For the purposes of this Treaty:

(1) The term "investment" means every kind of asset, particularly:

(a) Movable and immovable property and any other property rights, such as mortgages and liens;

(b) Shares and other kinds of interest in companies;

(c) Claims to money or to any performance having an economic value and having the character of an interest by virtue of its purpose and size;

(d) Copyright, industrial property rights, technical processes, trade marks, trade names, know-how and good will;

(e) Concessions under public law, including exploration and exploitation concessions;

Any alteration of the form in which assets are invested shall not affect their status as investments.

2. The term "returns" means the amounts derived from an investment as profits, dividends, interest, royalties or other rights for a specific period.

3. The term "nationals" means:

(a) In respect of the Republic of Mali: Malians within the meaning of the Malian Nationality Code;

(b) In respect of the Federal Republic of Germany: Germany within the meaning of the Basic Law for the Federal Republic of Germany.

4. The term "companies" means:

(a) In respect of the Republic of Mali: any juridical person, commercial or other company or association having legal personality which has been constituted under the law of the Republic of Mali;

(b) In respect of the Federal Republic of Germany: any juridical person or any commercial or other company or association, with or without legal personality, having its seat in the German area covered by this Treaty, and validly constituted under the law, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not it operates for profit.

Article 2.

Each Contracting Party shall, as far as possible, promote capital investment in its territory by nationals or companies of the other Contracting Party and shall permit such investment in accordance with its legislation. It shall, in all cases, accord just and equitable treatment to such investment.

Article 3.

1. Neither Contracting Party shall, in its territory, subject investments owned or controlled by nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments of its own nationals and companies or to investments of nationals or companies of third States.

2. Neither Contracting Party shall, in its territory, subject nationals or companies of the other Contracting Party, as regards activities in connection with investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of third States.

Article 4.

1. Investments by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2. Investments by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to measures equivalent in effect to expropriation or nationalization except for reasons of public policy and against compensation. Such compensation shall be equal to the value of the investment expropriated immediately prior to the date on which the expropriation or nationalization was made public. The compensation shall be paid without delay and shall, until the date of payment, yield interest at the prevailing bank interest rate; it shall be in the form of liquid resources and freely transferable. Adequate arrangements shall be made, at or prior to the time of the expropriation, nationalization or similar measure, for determining and paying such compensation. The legality of any such expropriation, nationalization or similar measure and the amount of the compensation shall be subject to review by the ordinary courts.

3. Nationals or companies of one Contracting Party whose investments suffer losses as a result of war or other armed conflict, revolution, a state of national emergency or an insurrection in the territory of the other Contracting Party shall be accorded by the latter Party treatment no less favourable, as regards restitution, indemnification, compensation or other reparation, than that which the latter Party accords to its own nationals or companies. All such payments shall be freely transferable.

4. In all matters governed by this article, nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party.

Article 5.

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

- (a) Capital and additional amounts intended to maintain or increase the investment;
- (b) Returns;
- (c) Loan repayments;
- (d) Royalties and other payments derived from the rights specified in article 1, paragraph 1 (d);
- (e) Proceeds from the disposal of all or part of an investment.

Article 6.

A Contracting Party may, by virtue of a guarantee assumed in respect of an investment in the territory of the other Contracting Party, make payments to its own nationals or companies. In such an event, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party.

The former Contracting Party shall be entitled to assert any right or claim assigned to it on the same conditions as the national or company in question. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, the provisions of article 4, paragraphs 2 and 3, and of article 5 shall apply mutatis mutandis.

Article 7.

1. Unless the Parties shall have otherwise arranged with the approval of the competent authorities of the Contracting Party in whose territory the investment is situated, transfers of funds under article 4, paragraph 2 or 3, article 5, or article 6 shall be effected without delay in the agreed currency and at the rate of exchange for current transactions prevailing on the day of transfer.
2. Such rate of exchange shall conform to the relevant provisions of the International Monetary Fund. In case of doubt, the rate of exchange shall be based on exchange rates which the International Monetary Fund would apply if, on the day of payment, it converted special drawing rights into the currencies of the countries concerned.
3. If the provisions of paragraph 2 are not applicable in respect of one of the Contracting Parties, the official rate of exchange fixed by that Contracting Party in relation to another freely convertible currency shall be applied. If no such rate has been fixed, a just and equitable exchange rate shall be accepted.

Article 8.

1. If the legislation of either Contracting Party gives rise to general or specific regulations which accord more favourable treatment to the investments of the nationals or companies of the other Contracting Party than is provided for by this Treaty, such regulations shall be observed within the framework of this Treaty.
2. If general or specific regulations resulting from an international Convention to which each of the Contracting Parties has acceded accord more favourable treatment than is provided for by this Treaty, such regulations shall apply.

Article 9.

This Treaty shall also apply to investments which nationals or companies of either Contracting Party, acting in accordance with the legislation of the other Contracting Party, have made in the territory of that other Party prior to the entry into force of this Treaty.

Article 10.

1. Disputes concerning the interpretation or application of this Treaty shall be settled by negotiations between the Governments of the two Contracting Parties.
2. If a dispute cannot thus be settled, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
3. The arbitral tribunal shall be constituted in each individual case as follows: each Contracting Party shall appoint one member and these two members shall then agree upon a national of a third State as the chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the chairman within three months from the date on which one Contracting Party notifies the other of its desire to submit the dispute to an arbitral tribunal.
4. If the time-limits specified in paragraph 3 have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall make the appointments. If the Vice-President is a national of either Contracting Party, or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall make the appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the chairman and the remaining costs shall be shared equally by the Contracting Parties. The arbitral tribunal can decide to apportion the costs differently. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11.

This Treaty shall remain in force even in the event of disputes between the Contracting Parties, without prejudice to the right to take such interim measures as are permitted under the general rules of international law. Such measures shall be rescinded not later than the date of the actual ending of the dispute, irrespective of whether or not diplomatic relations exist.

Article 12.

With the exception of the provisions of paragraph 7 of the protocol relating to air navigation, this Treaty shall also apply to Land Berlin, unless the Government of the Federal Republic of Germany declares otherwise to the Government of the Republic of Mali within three months of the entry into force of this Treaty.

Article 13.

1. This Treaty is subject to ratification; the instruments of ratification shall be exchanged as soon as possible at Bamako.
2. This Treaty shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for 10 years and shall thereafter remain in force indefinitely unless it is terminated by either Contracting Party upon one year's written notice. On expiry of the period of 10 years, the Treaty may be denounced at any time but shall remain in force for a further year after denunciation.
3. In respect of investments made prior to the date of termination of this Treaty, the provisions of the Treaty and of the protocol, which forms an integral part of the Treaty, shall continue to be applicable for 10 years from the date of termination of the Treaty.

Done at Bonn on 28 June 1977, in duplicate in the German and French languages, both texts being equally authentic.

For the Federal Republic of Germany

Genscher

For the Republic of Mali:

Lamine Keita

PROTOCOL

On signing the Treaty concerning the promotion and reciprocal protection of capital investment concluded between the Federal Republic of Germany and the Republic of Mali, the undersigned plenipotentiaries agreed also on the following arrangements, which shall be regarded as an integral part of the Treaty:

(1) Ad article 1

Investment returns and, in the case of re-investment, returns from re-investment shall enjoy the same protection as investments.

(2) Ad article 2

(a) Investments made in accordance with the legislation of either Contracting Party within the area of application of that Party's legal system by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

(b) Only those investments in the territory of the Republic of Mali which have received written approval in accordance with the laws and regulations in force pertaining to foreign investments shall come within the scope of this Treaty. The Government of Mali shall consider favourably requests for such approval.

(c) Either Contracting Party may, in the interest of its national economy and in cases not covered by this Treaty and this protocol, at the time of the authorization of an investment by nationals or companies of the other Contracting Party, reach agreement with them in the authorization document concerning special conditions for the transfer of returns from invested capital and, in the event of the disposal of an investment, of proceeds from that disposal.

(3) Ad article 3

(a) The following shall be deemed to be "activities" within the meaning of article 3, paragraph 2: the management, application, use and enjoyment of an investment in accordance with the legislation of the Contracting Party in whose territory the investment is situated. The following shall be deemed to be "less favourable" treatment within the meaning of article 3, paragraph 2: any discriminatory measure pertaining, in particular, to restrictions on the purchase of raw or auxiliary materials, energy, and fuel and means of production or operation of any kind, and any impediment to the sale of products on domestic or foreign markets. General measures taken for reasons of security, order, health, the maintenance of public order, and morality shall not be deemed to be "less favourable" treatment within the meaning of article 3.

(b) The Contracting Parties shall, within the framework of their domestic legislation, consider favourably applications for entry and permission to stay by persons of one Contracting Party who wish to enter the territory of the other Contracting Party in order to initiate or execute a capital investment; similar treatment shall be accorded to workers from either Contracting Party who, in connection with an investment, wish to enter and stay in the territory of the other Contracting Party in order to carry on an activity as employees. All applications for a work permit made in connection with an investment shall likewise receive favourable consideration.

(c) The granting of facilities to State companies or enterprises to enable them to achieve the public objectives assigned to them shall not be deemed contrary to article 3, paragraph 2.

(4) Ad article 4

The term "expropriation" means the withdrawal or limitation of any right of ownership which alone or together with other rights constitutes a capital investment.

(5) Ad article 7

A transfer shall be deemed to have been made "without delay" within the meaning of article 7, paragraph 1, when made within the period normally required for the completion of transfer formalities. The period shall run from the day on which the relevant application is submitted and shall in no case exceed two months.

(6) Ad article 8

Each Contracting Party shall respect all other obligations arising from agreements between that Party and nationals or companies of the other Contracting Party concerning investments in its territory.

(7) With regard to the transport of goods or passengers in connection with the investment of capital, neither Contracting Party shall exclude or impede transport enterprises of the other Contracting Party, and each shall grant any transport permits required.

(a) Goods directly intended for capital investment within the meaning of this Treaty or those purchased in the territory of a Contracting Party or a third State by or on behalf of an enterprise in which funds are invested within the meaning of this Treaty;

(b) Persons travelling for the purpose of undertaking capital investment.

Done at Bonn on 28 June 1977, in duplicate, in the German and French languages, both texts being equally authentic.

For the Federal Republic of Germany

Genscher

For the Republic of Mali:

Lamine Keita

EXCHANGE OF LETTERS

I THE MINISTER OF INDUSTRIAL DEVELOPMENT AND TOURISM OF THE REPUBLIC OF MALI

Bonn, 28 June 1977

Sir,

With reference to the Treaty signed today between the Federal Republic of Germany and the Republic of Mali concerning the promotion and reciprocal protection of capital investment, I have the honour to confirm that during the course of our negotiations a supplementary agreement was concluded on the following point:

For the purpose of encouraging capital investment by German nationals and companies in the territory of the Republic of Mali, the Government of the Republic of Mali will provisionally apply the provisions of the Treaty as from the day of signature.

Accept, Sir, etc.

His Excellency Hans-Dietrich Genscher

Minister for Foreign Affairs of the Federal Republic of Germany

II LAMINE KEITA

THE MINISTER FOR FOREIGN AFFAIRS OF THE FEDERAL REPUBLIC OF GERMANY

Bonn, 28 June 1977

Sir,

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

[See letter I]

Accept, Sir, etc.

His Excellency Lamine Keita

Minister of Industrial Development and Tourism of the Republic of Mali