

Treaty between the Federal Republic of Germany and Federal Republic of Nigeria concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Federal Republic of Nigeria –

Desiring to intensify economic co-operation between both Contracting Parties;

Intending to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations –

Have agreed as follows:

Article 1. Definitions

For the purposes of this Treaty:

1. The term "investments" comprises every kind of asset and, in particular, though not exclusively:

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

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

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic and financial value;

(d) Rights arising out of a leasing agreement;

(e) Intellectual property rights, in particular copyrights, patents, utility-model patents, industrial designs, trademarks, trade-names, trade and business secrets, technical processes, know-how, and good will;

(f) Business concessions which have been or may be granted under public law, including concessions to search for, cultivate, extract and exploit natural resources;

Provided that any alteration of the form in which assets are invested shall not affect their classification as investment;

2. The term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, capital gains, royalties or fees;

3. The term "investor" means

(a) In respect of the Federal Republic of Nigeria:

(i) Any Nigerian citizen within the meaning in the Nigerian Constitution,

(ii) Corporations, firms and associations incorporated or constituted under the law in force in the Federal Republic of Nigeria and having their seat in the territory of the Federal Republic of Nigeria,

(b) In respect of the Federal Republic of Germany:

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

(ii) Any juridical person as well as any commercial or other company or association with or without legal personality having

its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit.

Article 2. Scope of the Treaty

This Treaty shall apply

(a) In respect of investments in the territory of the Federal Republic of Germany to all investments made by investors of the Federal Republic of Nigeria;

(b) In respect of the investments in the territory of the Federal Republic of Nigeria, to all investments made by investors of the Federal Republic of Germany.

Article 3. Promotion of Investments

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

(2) Each Contracting Party shall in its territory in any case accord investments by investors of the other Contracting Party fair and equitable treatment as well as full protection under the Treaty.

(3) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall subject investments in its territory owned or controlled by investors of the other Contracting Party to treatment less favourable than it accords to investments of its own investors or to investments of investors of any third State.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own investors or to investors of any third State.

(3) Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article either Contracting Party may grant to its own investors special incentives for development purposes in order to stimulate the creation of local industries, especially small and medium-sized enterprises, provided that they do not significantly affect the investments and activities of investors of the other Contracting Party.

Article 5. Protection of Investments

(1) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party shall not directly or indirectly be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt or natural disaster, shall be accorded

treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 6. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular

(a) The principal and additional amounts to maintain or increase the investment;

(b) The returns;

(c) The repayment of loans;

(d) The proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) The compensation provided for in Article 5. Article 5.

(2) Transfers under Article 5 (2) or (3), this Article or Article 7 shall be made without delay at the market rate of exchange applicable on the day of the transfer. Article 5 (2) or (3), this Article or Article 7 shall be made without delay at the market rate of exchange applicable on the day of the transfer.

(3) Should there be no foreign exchange market the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights shall apply.

Article 7. Subrogation

If either Contracting Party makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, 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 of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 5 (2) and (3) as well as Article 6 shall apply *mutatis mutandis*.

Article 8. More Favourable Provisions and other Obligations

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulation shall to the extent that it is more favourable prevail over this Treaty.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 9. Applicability

(1) This Treaty shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

(2) This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 10. Settlement of Disputes between the Contracting Parties

(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 dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above 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 necessary 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 Court next in seniority who is not a national of either Contracting Party shall make the necessary appointments.

(5) The arbitration 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 and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

Article 11. Settlement of Disputes between an Investor and a Contracting Party

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other Contracting Party, be submitted for arbitration. Unless the parties in dispute agree otherwise, the dispute shall be submitted for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

(3) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

(4) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

Article 12. Protocol

The attached Protocol shall form an integral part of this Treaty.

Article 13. Amendment or Revision

Any amendment or revision of this Treaty must be made in writing. It shall enter into force in accordance with the procedure laid down by this Treaty in Article 14 (1).

Article 14. Entry Into Force, Duration and Termination

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

(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 a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Treaty may be denounced at any time by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Treaty, the provisions of the preceding Articles shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

Done at Abuja on 28th March 2000 in duplicate in the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany

Armin Hiller

For the Federal Republic of Nigeria

Iyorchia Ayu

On signing the Treaty between the Federal Republic of Germany and the Federal Republic of Nigeria concerning the Encouragement and Reciprocal Protection of Investments, the plenipotentiaries, being duly authorized thereto, have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Treaty:

1. Ad Article 1

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom shall enjoy the same protection as the investment

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Contracting Party.

2. Ad Article 3

The Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as; international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

3. Ad Article 4

(a) The following shall more particularly, though not exclusively, be deemed activity" within the meaning of Article 4 (2): the management, maintenance, use, enjoyment and disposal of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 4: unequal treatment in the case of restrictions on the pure base of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 4.

(b) The provisions of Article 4 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

(c) The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

4. A transfer shall be deemed to have been made "without delay" within the meaning of Article 6 (2) if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted complete and in due form and may on no account exceed two months.

5. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport without prejudice to relevant bilateral or multilateral agreements binding on either Contracting Party.