

# **Treaty between the Federal Republic of Germany and the Federative Republic of Brazil on the promotion and mutual protection of investments**

The Federal Republic of Germany and the Federal Republic of Brazil,

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

In the endeavor to create favorable conditions for investments by investors of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are likely to stimulate private economic initiatives and increase prosperity in both countries,

Have agreed as follows:

## **Article 1.**

For the purposes of this Treaty

1. The term "investments" means assets of any kind invested or re-invested by the investor of a Contracting Party in the territory of the other Contracting Party in accordance with its legislation, in particular but not exclusively

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;

b) Shares, quotas and other types of participation in companies;

c) Claims for money or entitlement to benefits having an economic value and related to an investment;

d) Intellectual property rights, such as copyrights, patents, utility models, industrial designs, trademarks, trade names, unpublished information, technical procedures, know-how and goodwill;

e) Public-law concessions, including concessions and concessions on natural resources;

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 profits, dividends, interest, royalties or other charges;

3. The term "investors"

a) Natural persons who, according to the constitution of a Contracting Party, have their nationality and who invest in the territory of the other Contracting Party,

b) Legal persons, commercial companies or other companies and associations with or without legal personality who are established in the territory of one Contracting Party and have been established under their legislation, whether or not their activity is for-profit and who are established in the territory of the other Contracting Party To make an investment;

4. The term "territory" shall mean the territory of the Contracting Party concerned, including the exclusive economic zone and the mainland base, in so far as the international law of that Contracting Party permits the exercise of sovereign rights or sovereign powers in those territories.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investments of investors 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 not interfere with the management, use, use or use of the investments of investors of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

### **Article 3.**

(1) Each Contracting Party shall treat investments of investors of the other Contracting Parties or investments in which investors of the other Contracting Parties are involved in their territory no less favorable than the investments of their own investors or investments by investors of third States.

(2) Each Contracting Party shall treat investors of the other Contracting Parties with regard to their activities in connection with investments in their territory no less favorable than their own investors or investors of third States.

(3) This treatment does not relate to the privileges granted by a Contracting Party to third-country investors on account of their membership in a customs or economic union, a common market, a free trade area or a similar regional grouping or because of their association.

(4) This treatment also does not apply to benefits granted by a Contracting Party to investors of third countries under a double taxation agreement or other agreements on tax questions.

### **Article 4.**

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

(2) Investments by investors of a Contracting Party may be expropriated, nationalized or subject to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting Parties only for the general good and for compensation. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid immediately in convertible currency and freely transferable. The interest rate is payable at the current LIBOR rate until the date of payment. 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) Investors in a Contracting Party who suffer losses from investments in the territory of the other Contracting Party through war or other armed conflicts shall be treated no less favorably by the Contracting Party with regard to reimbursements, indemnities, compensation or other consideration than their own investors. Such payments must be freely transferable.

(4) In respect of the matters governed by this Article, the investors of a Contracting Party shall enjoy most-favored-nation treatment in the territory of the other Contracting Party.

### **Article 5.**

(1) Each Contracting Party guarantees to the investors of the other Contracting Parties the free transfer of payments in connection with an investment, in particular, but not exclusively:

- 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) The compensation provided for in Article 4;
- f) Of the payments provided for in Article 6.

These transfers shall be effected without delay at the rate valid on the day of the transfer.

(2) This price should not deviate materially from the market price resulting from the conversion of the currency of the Contracting Party in whose territory the investment is situated and the currency desired by the investor in US dollars in the official markets of the two countries concerned for current transactions ,

## **Article 6.**

If a Contracting Party or one of its institutions has made payments to its investors on the basis of a guarantee for an investment in the territory of the other Contracting Party, this other Contracting Party shall recognize the transfer of all rights or claims of such investors to the former, without prejudice to the rights of the former Contracting Party. The authorized Contracting Party or one of its institutions may exercise the rights to the same extent as its legal predecessor. The abovementioned provisions do not apply to the extent to which the transfer of property to immovable property within the framework of the subrogation is not possible under the national legislation of a contracting party. In this case, the entitled Contracting Party or one of its institutions acquires a compensation claim in money. The provisions of Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the calculation of the compensation claim and the transfer of payments under the transferred claims provided for in this Article.

## **Article 7.**

(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 grants the investors of the other Contracting Parties more favorable treatment than under this Treaty, this provision shall be governed by this Treaty in so far as it is more favorable.

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

## **Article 8.**

This Agreement shall also apply to investments made by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory before the entry into force of this Treaty. However, the contract does not apply to differences of opinion which arose before its entry into force.

## **Article 9.**

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

(2) If no agreement can be reached in this way, the dispute shall be submitted to an arbitration board at the request of either party.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by the appointment of an arbitrator to each of the Contracting Parties and the appointment of the two arbitrators to the members of a third State to be appointed by the Governments of the two Contracting Parties. The arbitrators shall be appointed within two months, the chairman shall be appointed within three months after the one party to the agreement has informed the other that it intends 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. The chairman and the members of the arbitral tribunal must have the nationality of states with which the two contracting parties have diplomatic relations.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are final and binding for both contracting parties. Each Contracting Party shall bear the costs of its arbitrator 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.

## **Article 10.**

(1) Any differences of opinion regarding investments between one of the Contracting Parties and an investor of the other Contracting Parties shall be settled amicably as far as possible.

(2) If a dispute cannot be resolved within a period of six (6) months from the date on which one of the parties to the dispute has raised it, it shall be submitted, at the request of the investor, to international arbitration. Unless the parties to the dispute otherwise agree, the provisions contained in paragraphs 3 to 5 of Article 9 of this Agreement shall, to the extent that they are applicable, apply analogously; the parties to the dispute shall appoint the arbitrators of the arbitral tribunal in accordance with the procedure laid down in paragraph 3 of that Article; if the time limits stipulated in that paragraph are not observed, each party to the dispute may, in the absence of other agreements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to undertake the necessary designations. The arbitration award will be executed accordingly with national law.

(3) The Contracting Party participating in the dispute shall not argue as an objection during an arbitration or the enforcement of an arbitration award that the investor of the other Contracting Party has received compensation for part of the loss or damage caused by an insurance.

(4) In the event that both Contracting Parties also became Contracting States to the Convention of 18 March 1965 on the resolution of disputes between states and nationals of other States, differences of opinion under this Article shall be subject to an arbitration procedure within the framework of the abovementioned Convention, The parties to the dispute shall make a different agreement.

## **Article 11.**

The provisions of this Treaty shall continue to apply without restriction in the cases referred to in Article 63 of the Vienna Convention of 23 May 1969 on the law of the Treaties.

## **Article 12.**

(1) This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged in Brasilia as soon as the Federal Republic of Brazil has notified the Federal Republic of Germany that it has complied with the national legal requirements for the entry into force of the Treaty.

(2) The Treaty shall enter into force one month after the exchange of the instruments of ratification.

(3) It remains in force for ten years; After the expiration of this period, the period of validity shall be prolonged indefinitely for an indefinite period unless one of the two Contracting Parties terminates the contract in writing by diplomatic means with a period of twelve months before the expiration. After ten years, the contract may be terminated at any time by a period of twelve months.

(4) For investments made before the date of the expiry of this Treaty, Articles 1 to 11 shall continue to apply for fifteen years from the date of expiry of the Treaty.

For the Federal Republic of Germany

Kinkel

For the Federal Republic of Brazil

Lampreia

## **Protocol**

On the occasion of the signing of the Agreement on Reciprocal Investment Promotion and Protection between the Federal Republic of Spain and the Federative Republic of Brazil, the undersigned plenipotentiaries also agreed on the following provisions, which form an integral part of the said Agreement:

### **1. With Reference to Article 1**

Any person holding a national passport issued by the competent authorities of that Contracting Party shall be considered a national of one of the Contracting Parties, without prejudice to other procedures for establishing nationality.

## **2. With Reference to Article 2**

Investments made by an investor of one Contracting Party in the territory of another Contracting Party in accordance with the latter's internal legal provisions, as well as income derived therefrom, shall enjoy the full protection of this Agreement.

## **3. With Reference to Article 3**

a) As an "activity", according to paragraph 2 of Article 3, the administration, application, use and enjoyment of an investment shall be understood in particular, but not exclusively. As "less favourable" treatment under the terms of Article 3, special consideration will be given to differentiated treatment in the case of limitations on the acquisition of raw and auxiliary materials, energy and fuels, as well as means of production and exploitation of all kinds, differentiated treatment in the case of impediment to the sale of products within the country and abroad, and other measures having equivalent effect. Measures taken on grounds of public security or public policy, public health or morality shall not be regarded as "less favourable" treatment within the meaning of Article 3.

b) The provisions of Article 3 do not oblige the Contracting Parties to extend to investors resident or domiciled in the territory of the other Contracting Party the tax advantages, exemptions and reductions which, according to tax law, are granted only to investors resident or domiciled in their own territory.

(c) Within the framework of their internal legal provisions, the Contracting Parties shall benevolently examine applications by nationals of one of the Contracting Parties to enter and remain in the territory of the other Contracting Party in connection with an investment; the same shall apply to employees of one of the Contracting Parties who wish to engage in paid activity in connection with an investment and work permit requirements.

## **4. With Reference to Article 4**

The right to compensation will also prevail if there is state intervention in the company that is the object of an investment that considerably compromises its economic substance.

## **5. With Reference to Article 5**

A transfer shall be considered to take place "without delay" in accordance with Article 5(1) when it is carried out within the time normally required for completion of the necessary formalities. The time limit will be counted from the day on which the application has been duly filed, and may not exceed 2 (two) months. Notwithstanding this provision, the Federative Republic of Brazil shall have the right to make transfers relating to the product resulting from the liquidation or disposal of all or part of the investment, provided for in paragraph 1(d) of Article 5, within a maximum period of six (6) months.

## **6. With Reference to Article 10**

With respect to the Federative Republic of Brazil, a dispute may not be submitted to international arbitration, pursuant to paragraph 2 of Article 10, to the extent that the investor has already appealed to its internal jurisdiction and the latter has already ruled on the merits.

## **7.**

With regard to the international transport of goods and persons, arising from an investment, neither Contracting Party shall exclude or hinder the action of transport companies of the other Contracting Party and, where necessary, the corresponding authorisations.

Done at Bonn, 21 September 1995, in two original copies, each in the German and Portuguese languages, being both texts are equally authentic.

For the Federal Republic of Germany

Kinkel

For the Federative Republic of Brazil

Lamprey

