

Agreement between the Federal Republic of Germany and the Socialist People's Libyan Arab Jamahiriya concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Socialist People's Libyan Arab Jamahiriya –

Desiring to intensify economic co-operation between both countries,

Intending to create favourable conditions for investments by investors of either country in the territory of the other country,

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

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement

1. The term "investments" comprises every kind of asset, in particular:

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

(b) Shares 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 value;

(d) 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;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

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, royalties or fees;

3. The term "investors" with regard to either Contracting Party refers to:

(a) Natural persons who

– In respect of the Federal Republic of Germany are Germans within the meaning of its Basic Law; and

– In respect of the Socialist People's Libyan Arab Jamahiriya are considered to be nationals within the meaning of its applicable laws;

(b) Legal entities, including companies, corporations, business associations and other organizations, with or without legal personality which have their seat in the territory of that Contracting Party, irrespective of whether or not their activities are directed at profit;

4. The term "territory" means the territory of either Contracting Party including the territorial sea as well as the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party to exercise sovereign rights or jurisdiction in these areas.

Article 2. Promotion and Protection 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 Agreement. Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.
- (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 3. Treatment of Investments

- (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) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of this Article: the management, maintenance, use, enjoyment and disposal of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of this Article: unequal treatment in the case of restrictions on the purchase 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 this Article.
- (4) The treatment granted under this Article 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.
- (5) 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.
- (6) The provisions of this Article 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.
- (7) 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.
- (8) The investors of either Contracting Party are free to choose international means of transport for the transport of persons and capital-goods directly connected with an investment within the meaning of this Agreement.

Article 4. Compensation In Case of Expropriation

- (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, or revolt, 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 5. Free Transfer

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 4.

Article 6. 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 4 (2) and (3) as well as Article 5 shall apply *mutatis mutandis*.

Article 7. Provisions for Transfer

(1) Transfers under Article 4 (2) or (3), under Article 5 or Article 6 shall be made without delay at the market rate of exchange applicable on the day of the transfer. A transfer shall be deemed to have been made "without delay" 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 and may on no account exceed two months.

(2) In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments by the respective Central Bank or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 8. Other Provisions

(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 Agreement 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 Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

(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. Scope of Application

This Agreement 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. However, this Agreement shall not apply to disputes which have been raised prior to its entry into force.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled by the governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled within a period of three months from the date on which the matter was raised by either Contracting Party, 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 five 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 should 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 should 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.

(6) The chairman of the arbitration tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other 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 have agreed otherwise, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis on condition that the appointment of the members of the arbitration tribunal in accordance with Article 10 (3) is effected by the parties in dispute and that, insofar as the periods specified in Article 10 (3) are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

(3) 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.

(4) In the event of both Contracting Parties having become Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such a procedure.

Article 12. Relations between the Contracting Parties

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13. Entry Into Force, Duration and Termination

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

(2) This Agreement 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 Agreement 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 Agreement, the provisions of the preceding Articles shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

Done at Tripoli on 15 October 2004 in duplicate in the German, Arabic and English languages, all texts being authentic. In case of divergent interpretation of the German and the Arabic texts, the English text shall prevail.

For the Federal Republik of Germany

Chrobog

Staffelt

For the Socialist People's Libyan Arab Jamahiriya

Siala