

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

The Federal Republic of Germany and the Republic of Haiti,

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

Concerned to create favourable conditions for capital investment by nationals or companies of each of the States in the territory of the other, and

Recognizing that the encouragement and contractual protection of such investment are conducive to stimulating private enterprise and to increasing the prosperity of both nations,

Have agreed as follows:

Article 1.

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 2.

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

2. Neither Contracting Party shall, in its territory, apply to any activities of nationals or companies of the other Contracting Party in connexion with investments treatment less favourable than that granted to its own nationals or companies or to nationals or companies of third States.

Article 3.

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. The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party may be expropriated only for reasons of public policy and against compensation. The compensation paid shall be equal to the value of the investment expropriated, in the form of liquid resources, freely transferable and paid without delay. Adequate arrangements shall be made at or prior to the time of expropriation for determining and paying such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by the ordinary courts.

3. Nationals or companies of either Contracting Party who suffer investment losses as a result of war or other armed conflict, revolution, national emergency or civil unrest in the territory of the other Contracting Party shall be accorded by that Party treatment no less favourable than that granted to its own nationals or companies in respect of restitution, indemnities, compensation or other forms of reparation. 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 4.

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of investment capital and the earnings therefrom and, in the event of liquidation, of the proceeds thereof.

Article 5.

Should a Contracting Party, by virtue of a guaranteed investment in the territory of the other Contracting Party, make payments to its own nationals or companies, that other Contracting Party shall, without prejudice to the rights of the first Contracting Party under article 11, recognize the statutory or contractual transfer of all the rights and claims of such nationals or companies to the first Contracting Party, and the subrogation of all such rights and claims (devolved interest) which the first Contracting Party is authorized to exercise on the same footing as its predecessor. As regards the transfer of payments to the Contracting Party concerned by virtue of the devolution of interest, the provisions of article 3, paragraphs 2 and 3, and of article 4, shall apply *mutatis mutandis*.

Article 6.

1. Unless the Parties shall have otherwise arranged with the approval of the competent authorities of the Contracting Party in whose territory the investment has been made, transfers under article 3, paragraph 2 or 3, article 4 or article 5 shall be effected without delay and at the rate of exchange for current transactions prevailing on the date of transfer.

2. The rate of exchange applicable to current transactions shall be based upon the par value agreed upon with the International Monetary Fund and shall fall within the upper and lower limits of parity fluctuation permitted under article IV, section 3, of the Articles of Agreement of the International Monetary Fund.⁽¹⁾

3. If, at the date of transfer, no exchange rate within the meaning of paragraph 2 exists in respect of the Contracting Party concerned, the official rate of exchange fixed by that Contracting Party for its national currency against the United States dollar, another freely convertible currency or gold shall apply. If not such rate exists, the competent authorities of the Contracting Party in whose territory the investment has been made shall accept a just and equitable exchange rate.

Article 7.

1. If the legislation of either Contracting Party or present or future mutual international obligations of the two Contracting Parties not covered by this Treaty give 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 have precedence over this Treaty in so far as they are more favourable.

2. Each Contracting Party shall comply with any other obligation it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 8.

1. The term "investment" shall include every kind of asset, particularly but not exclusively:

- (a) Movable and immovable property and all other rights in rem, such as mortgages, liens, etc.;
- (b) Shares and other kinds of interest in companies;
- (c) Pecuniary claims or claims for any performance having an economic value;
- (d) Copyrights, patents, technical processes, trade names or goodwill;
- (e) Concessions under public law, including exploration and exploitation concessions.

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

2. "Earnings" shall mean the amounts yielded in the form of profits or interest during a specified period by investments.

3. "Nationals" shall mean:

- (a) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany;
- (b) In respect of the Republic of Haiti: Haitians within the meaning of the Act on rules governing Haitian nationality.

4. "Companies" shall mean:

(a) In respect of the Federal Republic of Germany: any body corporate or any commercial or other company or association, with or without legal personality, which has its registered office in the territory of the Federal Republic of Germany and is validly constituted under legislation irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not it operates for profit;

(b) In respect of the Republic of Haiti: any body corporate, commercial or other company or association having legal personality, which has its registered office in Haiti and has been constituted under the applicable laws.

Article 9.

The provisions of this Treaty shall also apply to investments made by nationals or companies of either Contracting Party, in accordance with the legislation of the other Contracting Party, in the territory of that Party prior to the entry into force of this Treaty. This provision shall not affect the Agreement of 27 February 1953(2) on German external debts.

Article 10.

Within the framework of this Treaty each Contracting Party shall grant national treatment in consideration of the fact that national treatment in the same matters is granted by the other Contracting Party.

Article 11.

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

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

3. The arbitral tribunal shall be constituted on an ad hoc basis; each Contracting Party shall appoint one member and the two members shall agree to select a national of a third State as 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 is otherwise debarred from so doing, the Vice-President shall make the appointments. If the Vice-President too is a national of either Contracting Party or if he too is debarred from so doing, 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 majority vote. Its decisions shall be binding. Each Contracting Party shall bear the costs of the arbitrator appointed by it and of its counsel in the arbitral proceedings; the costs of the chairman and any other costs shall be shared equally by the Contracting Parties. The arbitral tribunal may make some other ruling regarding costs. In all other respects the arbitral tribunal shall determine its own procedure.

Article 12.

The provisions of 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 abrogated not later than the date of the actual ending of the dispute, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

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 Haiti within three months of the entry into force of this Treaty.

Article 14.

1. This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.
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 notice of termination is given in writing by either Contracting Party one year prior to its expiry. 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 expiry date of the Treaty, articles 1 to 13 shall continue to be applicable for 20 years from the expiry date of this Treaty.

Done at Port-au-Prince, on 14 August 1973 in four copies, two in German and two in French, all texts being equally authentic.

For the Government of the Federal Republic of Germany:

Erich A. Hüscher

For the Government of the Republic of Haiti:

Dr. A. Raymond

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 Haiti, the undersigned plenipotentiaries have also agreed on the following arrangements, which shall be regarded as an integral part of the Treaty:

(1) Ad Article 1

In so far as the legislation or regulations of either Contracting Party require an approval or authorization procedure for capital investment by foreign nationals or companies, the provisions of this Treaty shall not be applicable to a given capital investment until the approval or authorization procedure relating to it has been completed. As from the date of such approval or authorization such capital investment shall enjoy the full protection of the present Treaty.

(2) Ad Article 2

(a) The following, in particular but not exclusively, shall be deemed to be activities for the purposes of article 2, paragraph 2: the management, application, use and enjoyment of an investment. The following, in particular, shall be deemed to be "less favourable treatment" for the purposes of article 2, paragraph 2: any restriction on the purchase of raw or auxiliary materials, energy and fuel, and means of production or operation of any kind; any non-statutory impediment to the sale of products on the domestic or foreign markets, and any other measures having similar effects. Measures taken for reasons of public safety and order, or public health or morality shall not be deemed to be "less favourable treatment" for the purposes of article 2.

(b) Either Contracting Party may, in the interest of its national economy, at the time of the approval or authorization of a capital investment by nationals or companies of the other Contracting Party, reach agreement with them in the approval or authorization document, on special conditions concerning:

(aa) The management of capital investments;

(bb) Economic activity.

When conditions of this nature are agreed upon, the provisions of article 2 shall not be applicable. However, such conditions shall be valid only if the departures from those provisions which they require are expressly stated and their modalities laid down in the approval or authorization document.

(c) Article 2, paragraph 2, shall not apply to entry, stay or wage-earning employment.

(3) Ad Article 3

The provisions of article 3, paragraph 2, shall also be applicable to the transfer of a capital investment to public ownership,

its placement under public control or any similar action by the public authority. "Expropriation" shall mean the withdrawal or restriction of any right of ownership constituting alone or together with other rights a capital investment.

(4) Ad Article 4

Any transfer effected with a view to relinquishing all or part of an investment shall be deemed to be "liquidation" for the purposes of article 4.

(5) Ad Article 6

A transfer shall be deemed to have been made "without delay" for the purpose of article 6, 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

(a) Investment earnings and, in the case of re-investment, earnings from reinvestment shall enjoy the same protection as investments.

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

(7) With regard to the transport of goods or passengers in connexion with the investment of capital, the Contracting Party shall neither exclude nor impede transport enterprises of the other Contracting Party and shall grant the required transport permits if any.

This shall apply to the transport of:

(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 in connexion with the execution of capital investment projects.

Done at Port-au-Prince, on 14 August 1973, in four copies, two in German and two in French, all texts being equally authentic.

For the Government of the Federal Republic of Germany:"

Erich A. Hüsck

For the Government of the Republic of Haiti:

Dr. A. Raymond

Exchange of letters

I Port-au-Prince, 17 July 1973

Sir,

For the purpose of facilitating operations and encouraging the expansion of capital investment by German nationals and companies, the Republic of Haiti will grant the necessary authorizations to German nationals who wish to enter, stay or take paid employment in the Republic of Haiti in connexion with capital investments made by German nationals or companies in Haiti, unless reasons of public safety and order, public health or morality, preclude it from doing so.

Accept, Sir, etc.

Dr. Adrien Raymond

Secretary of State

His Excellency Mr. Erich A. Hüsck

Ambassador of the Federal Republic of Germany

II Port-au-Prince, 17 July 1973

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.

Erich A. Hüscher

Ambassador of the Federal Republic of Germany

His Excellency Dr. Adrien Raymond

Secretary of State for Foreign and Cultural Affairs

Port-au-Prince