

# TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF NICARAGUA ON THE RECIPROCAL PROMOTION AND PROTECTION OF CAPITAL INVESTMENTS

The Federal Republic of Germany and the Republic of Nicaragua -

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

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

(1) The term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Public-law concessions, including concessions for concessions and concessions;

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 profit shares, dividends, interest, royalties or other charges;

(3) The term "nationals"

a) With regard to 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 Nicaragua:

Natural persons who are Nicaraguans according to the Nicaraguan laws;

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) In respect of the Republic of Nicaragua:

Any legal person established under the laws of Nicaragua, having its seat in the territory of the Republic of Nicaragua;

(5) The term "territory"

With respect to each Contracting Party, the territory subject to its sovereignty, as well as the marine territories in which the international law of the respective Contracting Parties permits the exercise of sovereign rights or sovereign powers.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies 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 in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to prerogatives granted by a Contracting Party to nationals or companies of third States because of their membership in a customs or economic or commercial market or a free trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. 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 without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. 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) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

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

- 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) Of the compensation provided for in Article 4.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7.**

- (1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.
- (2) This rate must correspond to the cross-rate, which is derived from the exchange rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8.**

- (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 gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.
- (2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 9.**

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty. However, this Agreement shall not apply to disputes or disputes arising before its entry into force which are connected with governmental measures applied before the date of entry into force of this Treaty.

## **Article 10.**

- (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 disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.
- (3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members 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 to appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.
- (4) If the deadlines set out in paragraph 3 are not met, each Contracting Party may, in the absence of any other agreement, 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 contracting parties or if he is also prevented

from doing so, the next member of the Court, who is not a national of either Contracting Party, shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member 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.

(6) If both Contracting Parties are also States parties to the Convention of 18 March 1965 on the settlement of disputes between States and nationals of other States, the arbitration referred to in Article 27 (1) of the Convention may not be invoked in so far as between the nationals Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

(1) This Treaty shall be subject to ratification; The instruments of ratification will be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further fifteen years from the date of expiry of the Treaty.

Done at Managua, this 6th day of May, 1996, in two originals, each in the German and Spanish languages, each text being equally authentic.

For the Federal Republic of Germany

Hans-Friedrich v. Ploetz

For the Republic of Nicaragua

E. Leal Sánchez

## Protocol

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Nicaragua on the Promotion and Reciprocal Protection of Capital Investments, the undersigned plenipotentiaries have further adopted the following provisions, which they will consider as an integral part of the Treaty:

1) With reference to Article 1

- a. The returns on a capital investment, and in the case of its reinvestment also the returns thereon, shall enjoy the same protection as the investment itself.
- b. Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of the respective Contracting Party shall, in particular, be considered a national of a Contracting Party,

(2) With reference to Article 2

- a. Capital investments which, in accordance with the legal provisions of one of the Contracting Parties, have been made in the territory of that Contracting Party by nationals or companies of the other Contracting Party, shall enjoy the full protection of the Treaty.
- b. The Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf whenever international law grants to the respective Contracting Party the exercise of sovereign rights or jurisdiction in these areas.

3) With reference to Article 3

- a. As activities within the meaning of paragraph 2 of Article 3 shall be considered especially, but not exclusively, the administration, utilization, use and development of a capital investment. The following shall in particular be considered as "less favorable treatment" within the meaning of Article 3: unequal 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, unequal treatment in the case of hindrance of the sale of products within the country and abroad, as well as any other measure having similar effects. Measures taken for reasons of public safety and order, public health or morality shall not be considered less favorable treatment within the meaning of Article 3.
- b. The provisions of Article 3 do not oblige a Contracting Party to extend tax advantages, exemptions and reductions, which under its tax laws are granted only to individuals and corporations resident in its territory, to individuals and corporations resident in the territory of the other Contracting Party.
- c. The Contracting Parties, in accordance with their internal legal provisions, shall treat with benevolence the applications for immigration and residence of persons of one Contracting Party who, in connection with a capital investment, wish to enter the territory of the other Contracting Party; the same rule shall apply to employees of one Contracting Party who, in connection with a capital investment, wish to enter and reside in the territory of the other Contracting Party in order to carry on their activity as employees. Likewise, applications for work permits shall be dealt with kindly.

4) With reference to Article 4

The right to compensation exists even in the case of intervention by state measures in the enterprise which is the object of the capital investment and as a result of which the economic substance of the enterprise is considerably impaired.

5) With reference to Article 7

A transfer shall be deemed to have been effected without delay within the meaning of Section 7 (1) if it has been effected within the period of time normally required for the completion of the transfer formalities. The time limit, which may in no case exceed two months, shall

The time limit, which may in no case exceed two months, shall commence to run at the time of delivery of the relevant request.

(6) With respect to the transport of goods and persons in connection with capital investments, each Contracting Party shall neither exclude nor hinder the transport undertakings of the other Contracting Party, and, if necessary, grant authorizations for the performance of the transports. This includes the carriage of:

a. goods intended directly for a capital investment, within the meaning of the Treaty, or acquired in the territory of a Contracting Party or of a third State by an enterprise or on behalf of an enterprise in which there is capital invested within the meaning of the Treaty;

b. persons traveling in connection with a capital investment.

Done at the city of Managua, in duplicate in the German and Spanish languages on the sixth day of May of the year one thousand nine hundred and ninety-six, both texts being equally authentic.

For the Federal Republic of Germany

Hans-Friedrich v. Ploetz

For the Republic of Nicaragua

E. Leal Sanchez