

# Treaty between the Federal Republic of Germany and Ukraine on the Promotion and Mutual Protection of Capital Investments

The Federal Republic of Germany and Ukraine -

Hereinafter referred to as "Contracting Parties"

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 entrepreneurship 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 a material or immaterial value, or claims on benefits having such value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trademarks, trade names, business and commercial secrets, technical procedures, know-how and goodwill;
- e) Rights to pursue an economic activity, including the rights to search, identify, extract or exploit natural resources based on legislation or by a contract concluded in accordance with such legislation.

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) With regard to Ukraine:

Nationals of Ukraine according to the Constitution and the applicable legislation;

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) With regard to Ukraine:

Subjects of an economic activity with or without legal personality established in the territory of Ukraine, whether or not their activity is directed towards profit.

## **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) Investments made by nationals or companies of the other Contracting Parties in accordance with the legal provisions of a Contracting Party within the scope of their jurisdiction enjoy the full protection of the contract.

(3) 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 which are owned or under the influence of nationals or companies of the other Contracting Parties and which have been authorized and made in accordance with Article 2 (2) in accordance with the legislation in force in the territory of the former Contracting Party Investments of 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 privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common 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 may not be less favorable than the rate (cross rate) resulting from the conversion rates that 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.

## **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, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice in The Hague 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 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 Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of the Convention may not be applied to the arbitration referred to above 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 arbitral tribunal of the said Convention (Article 27), or in the case of a transfer by law or a 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 otherwise agreed, the provisions of Article 10 (3) to (5) shall apply mutatis mutandis, provided that the members of the arbitral tribunal are appointed by the disputes in accordance with Article 10 (3), and that, as far as the disputes referred to in Article 10 (3) , Each Contracting Party may, in the absence of other agreements, ask the President of the Arbitration Court of the International Chamber of Commerce in Paris to make the necessary appointments. The arbitration shall be enforced under national law.

(3) 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.

(4) In the event that both Contracting Parties have also become 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 controversies shall make a different agreement; Each Contracting Party hereby declares its consent to such proceedings.

## **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 twenty years from the date of expiry of the Treaty.

Done at Kiev, this 15th day of February 1993, in two originals, each in the German and Ukrainian languages, both texts being equally authentic.

For the Federal Republic of Germany

Kinkel

For Ukraine

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At the signing of the Treaty between the Federal Republic of Germany and Ukraine on the Claim and Mutual Protection of Capital Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be deemed to be integral parts of the Treaty:

(1) Ad Article 1

(a) The income from the investment and, in the case of reinvestment, the income therefrom, shall enjoy the same protection as the investment.

(b) In particular, without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of a Contracting Party shall be deemed to be a national of that Party.

(2) Ad Article 2

(a) The Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that the people's law of the respective Contracting Party permits the exercise of sovereign rights or powers in these areas.

(b) Each Contracting Party may, on the basis of the principle of most favorable treatment, lay down special conditions for the granting of authorization for capital investment in economic sectors specified by legislation.

(3) Ad Article 3

(a) For the purposes of paragraph 2 of Article 3, "occupation" shall mean in particular, but not exclusively, the management, application, use and enjoyment of a capital investment. As a "less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, the restriction of the supply of raw materials and supplies, energy and fuels, and means of production and inputs of all kinds, the restriction of the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment. treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Contracting Party to grant tax concessions, exemptions and reductions which, under the tax laws, are available only to natural persons resident in its territory. The Contracting Parties shall not be obliged to extend to natural persons and companies resident in the territory of the other Contracting Party any tax concessions, exemptions or reductions granted by the tax laws only to natural persons and companies resident in the territory of the other Contracting Party.

(c) The Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for the entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment of capital; the same shall apply to employees of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment of capital and who wish to reside there in order to carry on an activity as an employee. Applications for work permits shall also be considered in a fair and equitable manner.

(4) Ad Article 4

An entitlement to compensation shall also exist if the enterprise which is the subject of the capital investment is interfered with by State measures and its economic substance is thereby substantially impaired.

(5) Ad Article 7

For the purposes of Article 7(1), a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally required for compliance with the formalities of the transfer. The period shall commence with the submission of a request to that effect and shall under no circumstances exceed two months.

(6) In the case of claims by GOtem and persons in connection with a capital investment, a Party shall neither switch off nor behind the transport companies of the other Party and shall, if necessary, grant authorizations for the execution of the transports. This includes requirements of

a) goods directly intended for investment within the meaning of the treaty or acquired for such investment in the territory of a Contracting Party or of a third State by or on behalf of an enterprise in which assets within the meaning of the treaty are invested;

b) persons traveling in connection with an investment.

(7) On the day of the entry into force of the Treaty between the Federal Republic of Germany and Ukraine on the Claim and Reciprocal Protection of Investments, the Treaty of June 13, 1989 between the Federal Republic of Germany and the Union of Soviet Socialist Republics on the Claim and Reciprocal Protection of Investments shall cease to have effect in the relationship between the Federal Republic of Germany and Ukraine.

Done at Kiev on February 15, 1993, in two originals, each in the German and Ukrainian languages, each text being equally authentic.

For the Federal Republic of Germany

Kinkel

For Ukraine

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## **Exchange of Letters**

The Federal Minister of Foreign Affairs

Kiev, February 15, 1993

Mr. Minister,

I have the honor to acknowledge receipt of your note of February 15, 1993, containing the following:

"I have the honor to inform you that the Government of Ukraine, in order to prevent the taking of investments by citizens or companies of the Federal Republic of Germany on the territory of Ukraine before the entry into force of the Treaty, will apply the Treaty from the date of signature.

This declaration is made with a view to enabling the Government of the Federal Republic of Germany to consider accepting guarantees for investments in Ukraine prior to the entry into force of this Treaty."

Please accept, Sir, the assurance of my highest consideration.

Kinkel

To the Minister of Foreign Affairs of Ukraine