

# Treaty between the Federal Republic of Germany and the Republic of Cuba on Reciprocal Encouragement and Protection of Capital Investments

The Federal Republic of Germany and the Republic of Cuba -

Encouraged by the desire to intensify economic collaboration between the two States,

For the purpose of creating favorable conditions for capital investments by nationals or corporations of either State in the territory of the other State,

Recognizing that the encouragement and protection by treaty of such capital investments may serve to stimulate private economic initiative and increase the well-being of both 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) Rights of participation in companies and other types of participation 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 concession and concession 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) With regard to the Republic of Cuba:

All natural persons who are nationals of that State in accordance with the law;

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 the Republic of Cuba:

All legal entities established in their territory under the laws and recognized by it, such as public institutions, corporations, foundations, associations, whether or not their liability is limited.

## **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 as 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 union, a common market or a free trade area or because of their association.

(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.

(5) In order to avoid doubts, it is stated that, with regard to the Republic of Cuba, the investments or activities of the nationals or companies referred to in paragraphs 1 and 2 are those which have been authorized by national legislation on foreign investment, and that the conditions laid down in paragraphs 1 And 2 shall apply to Articles 1 to 11 of this Treaty.

## **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 investments 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 which suffer losses in capital on account of war or other armed conflicts, state or tribunal or turmoil in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party as regards their refunds, compensation, 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 against non-commercial risks for investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of those nationals, without prejudice to the rights of the former Contracting Party By law or by virtue of legal transaction, to the former Contracting Parties. 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 resulting from the conversion rates which would be used by the International Monetary Fund to convert these currencies into special drawing rights. The rates which are published two days before the transfer from the International Monetary Fund and published in generally accessible sources are decisive.

## **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, the agreement shall in no case be applicable to differences of opinion and disputes arising before its entry into force.

## **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 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.

## **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 arrangements, 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.

## **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 expiration of this 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 expiration. 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 Havana City on April 30, 1996 in two copies, in German and Spanish, both texts being equally authentic.

For the Federal Republic of Germany

Dr. Georg Trefftz

Dr. Heinrich Kolb

For the Republic of Cuba

Ibrahim Ferradaz Garcia

## **Protocol**

In the act of signature of the Treaty between the Federal Republic of Germany and the Republic of Cuba on the reciprocal promotion and protection of capital investments, the undersigned plenipotentiaries have further adopted the following provisions, which shall be considered as an integral part of the Treaty:

### **1. Ad Article 1**

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

(b) Without prejudice to other procedures for determining nationality, any person holding a valid national passport issued by the competent authorities of the respective Contracting Party shall in particular be considered a national of a Contracting Party.

## **2. Ad 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 in the areas of the exclusive economic zone and of the continental shelf whenever international law grants to the respective Contracting Party the exercise of sovereign rights or jurisdiction in these areas.

## **3. Ad Article 3**

(a) Economic influence means in particular a non-negligible shareholding, which occurs especially when:

(i) more than 50 % of the capital is owned by nationals or companies of the respective Contracting Party or.

(ii) they are authorized to co-manage the activity of the enterprise in important decisions.

(b) For the purposes of this Article, "activity" means, in particular, but not exclusively, the following

in particular, but not exclusively, the administration, utilization, use and development of a capital investment. As "less favorable" treatment, for the purposes of this article, the following shall be considered in particular: unequal treatment in the case of restrictions on the acquisition of auxiliary raw materials, energy and fuels, as well as means of production and tools of all kinds, unequal treatment in the case of impediments to the sale of products in the country and abroad, as well as any other measure with similar effects.

Those measures which must be taken for reasons of public safety and order, public health or morality, are not considered as "less favorable" treatment.

(c) Promotional measures to develop local enterprises and small economic enterprises are not considered as departing from the provisions of paragraphs 1 and 2 of Article 3, provided that they do not essentially affect capital investments belonging to investors of the other Contracting Party.

(d) 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.

(e) The Contracting Parties, in accordance with their domestic legal provisions, shall deal with the immigration and residence applications 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 to carry on their activity as employees. Applications for work permits shall likewise be treated favourably.

## **4. Ad Article 4**

The right to compensation shall also apply in the event of intervention in the enterprise which is the subject of the capital investment by means of the measures referred to in section 4 (2), and as a result of which the economic value of the enterprise is considerably impaired.

## **5. Ad Article 7**

(a) The reference source shall be the publication of the Reuter Money Report.

(b) 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 transfer formalities. The time limit, which in no

case may exceed two months, shall commence to run at the time of delivery of the request, in due and complete form.

## **6. Ad Article 11**

If both Contracting Parties have also become Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, disputes between the parties to the dispute referred to in Article 11 shall be submitted to arbitration in accordance with the said Convention, provided that the parties to the dispute do not otherwise agree; the Contracting Parties agree to such a procedure.

## **7.**

With respect to the transportation of goods and persons in connection with capital investments, each Contracting Party shall not exclude or hinder the transportation companies of the other Contracting Party, and, if necessary, shall grant authorizations for the performance of such transportation.

Done at the City of Havana on April 30, 1996 in two texts, in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

Dr. Georg Trefftz

Dr. Heinrich Koib

For the Republic of Cuba

Ibrahim Ferradaz Garcia