

# Treaty between the Federal Republic of Germany and the Portuguese Republic on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Portuguese Republic

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

Seeking to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State;

Recognizing that the promotion and the contractual protection of these investments are suitable to revive the private economic initiative and increase the prosperity of the two peoples -

Have agreed as follows:

## Article 1.

For the purposes of this contract

1. The term "investments" means the following assets and rights:

- a) Share rights in companies and other types of participations;
- b) Ownership of movable and immovable property and other rights in rem;
- c) Claims on money or on other services which have an economic value;
- d) Copyright, industrial property rights, technical procedures, patents, trademarks, trade names and know-how;
- e) Public-law concessions, including concessions for the exploration and extraction of natural resources;
- f) Other assets or rights equivalent to the above;

2. The term "income" means the amounts which are attributable to an investment for a certain period of time as profit shares, dividends, interest, royalties or other fees;

3. The term "nationals"

- a) In respect of the Portuguese Republic: Portuguese within the meaning of the Constitution of the Portuguese Republic and within the meaning of the Portuguese laws governing nationality;
- b) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany;

4. The term "companies" means:

a) As regards the Portuguese Republic:

Any natural or legal persons, including any commercial or other company or group of companies with or without legal personality established in Portugal, who are legally constituted and act under the laws, irrespective of the rules governing the liability of their shareholders, members or members, Purpose, and whether or not their activity is directed toward profit;

b) With regard to the Federal Republic of Germany:

Any legal person or any trading company or other company or association with or without legal personality who is domiciled

in the German area of application of the present Treaty and which is lawful under the law whether the liability of its shareholders, members or members is restricted or unrestricted and whether its activity is aimed at profit or not.

## **Article 2.**

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.

## **Article 3.**

(1) Each Contracting Party shall, in its territory, treat investments of nationals or companies of the other Contracting Parties no less favorably 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.

## **Article 4.**

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

(2) Investments of nationals or companies of a Contracting Party may be expropriated or nationalized in the territory of the other Contracting Parties only for the general good and for compensation. The compensation must correspond to the value of the investment in question before the date on which the expropriation or nationalization became public; The period between the expropriation or nationalization measure and the fixing of compensation shall be taken into account. The compensation must be paid forthwith; It must in fact be usable and transferable. At the latest at the time of expropriation or nationalization, it is necessary to take appropriate measures for the fixing and performance of compensation. The legality of the expropriation or nationalization and the amount of the compensation must be verified in a regular legal process (civil courts, administrative courts) of the contracting party in whose territory the investment was made.

(3) Nationals or companies of a Contracting Party who suffer losses in investments in the territory of the other Contracting Party through war or other armed conflicts shall be treated no less favorably by the Contracting Party in respect of repayments, indemnities, compensation or other consideration than their own Nationals or companies.

(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 transfer of payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of investments;
- b) Of the revenue referred to in Article 1 (2), minus taxes;
- c) To repay loans;
- d) Of the liquidation proceeds in the case of a complete or partial sale of the investment, less taxes.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for 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 virtue of the rights of the former Contracting Party On the basis of legal transactions 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 to the Contracting Party concerned on the basis of the transferred claims.

## **Article 7.**

(1) In so far as the parties concerned have not made an alternative agreement approved by the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Articles 4, 5 or 6 shall be effected without delay at the daily rate for current transactions valid for the agreed currency ,

(2) This course must be consistent with the relevant provisions of the International Monetary Fund.

## **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 agreement with nationals or companies of the other Contracting Parties.

## **Article 9.**

This contract 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 already 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 the disagreement can not be settled in this way, it must 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.

(6) If both Contracting Parties are members of 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 this Convention shall not apply to the arbitration referred to above. 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 judicial decision of the arbitration tribunal of the said Convention (Article 27) or, in the case of a transfer by force of law or on the basis of legal transactions pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

This Treaty shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which are permitted by virtue of the general rules of international law. Measures of this kind

are to be lifted no later than the actual end of the dispute, irrespective of whether diplomatic relations exist.

## **Article 12.**

This Agreement shall apply to the Land of Berlin except for the provisions of Protocol 8 relating to air transport, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Portuguese Republic within three months after the entry into force of the Treaty ,

## **Article 13.**

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

(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, it shall be extended for an indefinite period unless one of the two Contracting Parties terminates the contract in writing with a period of twelve months. After ten years, the contract may be terminated at any time but remains in force for one year after termination.

(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 Bonn, this 16th day of September 1980, in two originals, each in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany

Hans-Dietrich Genscher

For the Portuguese Republic

Diogo F. do Amaral

## **Protocol**

At the time of signing the Treaty on the Claims and Reciprocal Protection of Investments between the Federal Republic of Germany and the Portuguese Republic, the undersigned Plenipotentiaries also made the following agreements, which shall be deemed to be integral parts of the Treaty:

### 1. Ad Article 1

(a) The income from the investment and, in the event of its 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 the Contracting Party concerned shall be deemed to be a national of that Party.

### 2. Ad Article 2

Investments made in accordance with the laws of one Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

### 3. Ad Article 3

(a) For the purposes of paragraph 2 of Article 3, "activity" shall mean in particular, but not exclusively, the management, use, enjoyment and enjoyment of an investment. "Less favorable" treatment within the meaning of Article 3, paragraph 2, shall be deemed to include, in particular, restrictions on the use of raw materials and supplies, energy and fuels, and means of production and inputs of all kinds, obstruction 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 within the meaning of Article 3.

(b) The Contracting Parties shall, within the framework of their internal legislation, give favourable consideration to applications for the entry and residence of persons of one Party who wish to enter the territory of the other Party in connection with the making and carrying out of a capital investment; the same shall apply to workers of one Party who wish to enter and reside in the territory of the other Party in connection with a capital investment in order to carry on an activity as a worker. Applications for work permits will also be favorably considered.

(c) The Parties consider that restrictions on access to medium and long-term credit are not incompatible with the provisions of Article 3.

#### 4. Ad Article 4

(a) Expropriation shall be understood to mean any form of deprivation or restriction of property or rights constituting a capital asset or a part thereof, as well as any other act of public authority having the effect of a permanent expropriation.

(b) A claim for 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 and this is ultimately attributable to such intervention.

(c) The provisions of Article 4, paragraph 2, concerning transfer shall apply only if the expropriated or nationalized capital investment has been made on the basis of imported assets, including reinvestment and added value.

(d) If the damage caused by any of the events referred to in paragraph 3 of Article 4 has resulted in a total loss of the investment, any payment made by way of damages, compensation or other consideration shall be treated in the same way as compensation payments under paragraph 2 of this Article.

#### 5. Ad Article 5

When, in the event of extreme balance of payments difficulties, the Portuguese Government is unable to transfer income and proceeds of liquidation within six months of the due date, it may, by decision of the Council of Ministers, suspend such transfers for a limited period of time and only to the extent required by the difficulties referred to above. However, it undertakes that the amount to be transferred shall in no case be less than 20% per annum of the total amount to be transferred.

In such a case, and if the investor so wishes, the amounts not transferred will be credited to a special account in a currency of the investor's choice. The interest to be paid shall be determined on the basis of the interest rates applied for corresponding borrowing on the financial market of the country whose preservation has been chosen.

#### 6. Ad Article 6

It is understood that the investment guarantee referred to in Article 6 covers only political risks, including transfer risk.

#### 7. Ad Article 7

For the purposes of Article 7, paragraph 1, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally required for the observance of the transfer formalities. This period shall commence on the date on which a complete application, accompanied by the required documents, has been submitted and shall under no circumstances exceed three months.

The application shall be considered complete even if missing documents could not be provided due to the exclusive responsibility of the competent authorities of the respective Contracting Party.

The deduction of taxes from amounts to be transferred [Article 5, letters b) and d)] shall not result in a delay of the transfer.

8. In the case of transportation of goods and persons in connection with the making of capital investments, the Contracting Parties shall neither eliminate nor hinder the transportation companies of the other Contracting Party and shall, if necessary, grant permission for the transportation to be carried out.

This shall include transports of

a) goods directly intended for investment within the meaning of this Treaty or acquired 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 this Treaty are invested;

b) persons traveling in connection with the making of investments.

Done at Bonn, this 16th day of September 1980, in two originals, each in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany

Hans-Dietrich Genscher

For the Portuguese Republic

Diogo F. do Amaral

## **Exchange of Letters**

The Federal Minister of Foreign Affairs

Bonn, September 16, 1980

Excellency,

I wish to confirm that we have agreed as follows:

The Contracting Parties consider the possibility of limiting the transfer provided for in paragraph 5 of the Protocol to Article 5 of the Treaty as a single arrangement which will cease to apply if, as a result of Portugal's negotiations with the European Communities on an accession treaty, a more favorable arrangement comes into force with regard to the said transfer for the Investors concerned.

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

Gensche

To His Excellency

The Minister of Foreign Affairs of the Portuguese Republic

Professor Dr. Diogo Freitas do Amaral

Bonn, September 16, 1980

The Minister for Foreign Affairs of the Portuguese Republic

Your Excellency,

I have the honor to acknowledge receipt of your letter of today's date, which reads as follows:

"I wish to confirm that we have agreed as follows:

The Contracting Parties consider the possibility of limiting the transfer provided for in paragraph 5 of the Protocol to Article 5 of the Treaty as an arrangement which shall cease to apply to the extent that, as a result of the negotiations of Portugal with the European Communities on an Accession Treaty, a more favorable arrangement enters into force with respect to the said transfer for the Investors concerned."

I have the honor to inform Your Excellency that my Government agrees with the foregoing confirmation.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Diogo F. do Amaral

To His Excellency

The Minister of Foreign Affairs of the Federal Republic of Germany Mr. Hans-Dietrich Genscher