

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

The Federal Republic of Germany and the Republic of Tajikistan

In the desire to deepen economic cooperation between the two States, seeking to create favorable conditions for the investments of investors of one State in the territory of the other State, recognizing that a promotion and a contractual protection of these investments are appropriate, To revitalize the private economic initiative and increase the prosperity 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) 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 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 "investor"

a) In respect of the Federal Republic of Germany: German in the sense of the Basic Law for the Federal Republic of Germany, any legal person as well as any trading company or other company or association with or without legal personality who is domiciled in the territory of the Federal Republic of Germany In the sense of the Basic Law for the Federal Republic of Germany, any legal person, as well as any trading company or other company or association with or without legal personality, which has its seat in the territory of the Federal Republic of Germany, whether its activity is directed to profit or not,

b) In respect of the Republic of Tajikistan:

A legal person and a natural person of the Republic of Tajikistan in accordance with their legislation.

## Article 2.

(1) Each State Party shall, as far as possible, promote investments in its territory by investors of the other Contracting State and allow such investments in accordance with its laws.

(2) Each State Party shall, in its own territory, treat investments of investors of the other Contracting State fairly and fairly in its territory and grant them full protection of the contract.

(3) A State Party shall in no way affect the administration, maintenance, use, use or disposal of the investments of investors of the other Contracting State in its territory by means of arbitrary or discriminatory measures.

### **Article 3.**

(1) Each Contracting State shall treat investments in its territory owned or under the influence of investors of the other Contracting State no less favorable than the investments of its own investors or investors of third States.

(2) Each Contracting State shall treat investors of the other Contracting State no less favorably than its own investors or investors of third States with regard to its activities in connection with investments in its territory.

(3) This treatment does not relate to the privileges granted by a Contracting State to investors of third countries because of their membership in a customs or economic union, a common market or a free trade area or because of its association with it.

(4) The treatment provided for in this article does not apply to benefits granted by a Contracting State to investors of third countries under a double tax treaty or other agreements on tax questions.

### **Article 4.**

(1) Investments by investors of a Contracting State shall enjoy full protection and full security in the territory of the other Contracting State.

(2) Investments made by investors of a Contracting State may be directly or indirectly, in the territory of the other Contracting State, expropriated directly or indirectly, nationalized or subject to other measures which are 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 interest 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 must be taken in an appropriate manner for the determination 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) Investors in a Contracting State who suffer losses from investments in the territory of the other Contracting State through a war or other armed conflict, revolution, state or turmoil shall be treated no less favorably by the State Party in respect of repayments, settlements, compensation or other consideration than its own investors. Such payments must be freely transferable.

(4) With regard to the matters governed by this Article, the investors of a Contracting State shall enjoy most-favored-nation treatment in the territory of the other Contracting State.

### **Article 5.**

Each State Party shall ensure that the investors of the other Contracting State are free to transfer the payments relating to 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 from the complete or partial liquidation or disposal of the investment;
- e) Of the compensation provided for in Article 4.

### **Article 6.**

If a Contracting State makes payments to its investors on the basis of a guarantee for an investment in the territory of the other Contracting State, that other Contracting State shall recognize the transfer of all rights or claims of such investors by law or by law to the former Contracting State. The other Contracting State shall also recognize the entry into force of all such rights or claims (transferred claims) which the former Contracting State 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 Article 6 shall be effected without delay at the market rate applicable on the date of the transfer.

(2) If there is no foreign exchange market, the cross rate is the rate of exchange 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) Where, under the laws of a Contracting State or under obligations under international law which exist or are established in the future between the Contracting States, a general or special rule giving the investments of the investors of the other Contracting State more favorable treatment than under this Treaty, This provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each State Party shall comply with any other obligation which it has assumed in respect of investments of investors of the other Contracting State in its territory.

## **Article 9.**

This Agreement shall also apply to investments made by investors of one Contracting State prior to the entry into force of this Treaty in accordance with the laws of the other Contracting State in its territory.

## **Article 10.**

(1) Dissensions between States Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting States.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration tribunal at the request of one of the two Contracting States.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by the appointment by each State Party of a Contracting State and the appointment of both members as members of a third State to be appointed by the Governments of the two Contracting States. The members shall be appointed within two months, the chairman shall be appointed within three months after the one Contracting State has notified the other that he wishes to submit the dispute to an arbitration tribunal.

(4) If the time limits set out in paragraph 3 are not met, in the absence of any other agreement, any State Party may ask the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting State 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 States, or if he is also prevented from attending, the next member of the Court of Justice who is not a national of either Contracting State shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each State 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 shall be borne equally by the two Contracting States. The arbitral tribunal may adopt a different cost regime. In addition, the arbitral tribunal shall regulate its own procedures.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting States and an investor of the other Contracting State shall, as far as possible, be settled amicably between the parties concerned.

(2) If the disagreement can not be settled within six months from the date of their assertion by one of the two parties, it shall be submitted to arbitration at the request of the investor of the other Contracting State. Unless otherwise agreed, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis, provided that the members of the arbitration tribunal are appointed by the parties 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 State Party to the dispute shall not argue during an arbitration or arbitration proceedings that the investor of the other Contracting State has received compensation for part of the loss or damage caused by an insurance.

(4) In the event that both States 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, disputes between themselves under this Article shall be subject to arbitration under this Convention, The controversies shall make a different agreement; Each State Party hereby declares its consent to such proceedings.

## **Article 12.**

This Treaty shall apply regardless of whether diplomatic or consular relations exist between the two Contracting States.

## **Article 13.**

The attached protocol is an integral part of this contract.

## **Article 14.**

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

(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 Contracting States terminates the contract in writing by giving twelve months' notice to expire by diplomatic means. 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, the foregoing Articles shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at Berlin, on 27 March 2003, in duplicate in the German, Tajik and Russian languages, both texts being authentic. If the German and Tajik texts are interpreted differently, the Russian text shall prevail.

For the Federal Republic of Germany

Klaus Scharioth

For the Republic of Tajikistan

Soliyev

## **Protocol to the Treaty between the Federal Republic of Germany and the Republic of Tajikistan on the Promotion and Reciprocal Protection of Capital Investments**

In signing the contract between the Federal Republic of Germany and the Republic of Tajikistan on the promotion and mutual protection of investments, the plenipotentiaries duly authorized to do so have also agreed to the following provisions which form an integral part of the contract:

### 1. Ad Article 1

a) Income from the investment and, in the case of reinvestment, its income also enjoy the same protection as the investment.

b) Without prejudice to other procedures for the determination of nationality, in particular as a national of a Contracting State, any person holding a national passport issued by the competent authorities of the Contracting State concerned shall apply.

### 2. Ad Article 2

The Treaty shall also apply in the territories of the exclusive economic zone and the mainland base where international law allows the respective Contracting State to exercise sovereign rights or sovereign powers in these territories.

### 3. Ad Article 3

a) The "administration" within the meaning of Article 3 (2) shall, in particular, but not exclusively, be the administration, maintenance, use, use and disposal of an investment. A "less favorable" treatment within the meaning of Article 3 is to be considered in particular: the different treatment in the case of restrictions on the purchase of raw materials and auxiliary materials, energy and fuels as well as production and operating means of all kinds which provide different treatment in the case of disabilities Sales of products at home and abroad as well as other measures with a similar effect. Measures to be taken for reasons of public security and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

b) Article 3 does not require a Contracting State to extend tax concessions, exemptions and reductions granted to investors established in its territory under the tax laws to investors resident in the territory of the other Contracting State.

c) The Contracting States shall, within the framework of their national legislation, formally examine applications for the entry and residence of persons of one Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; The same shall apply to employees of one Contracting State who enter the territory of the other Contracting State in the context of an investment and wish to reside there in order to pursue an activity as an employee. Applications for the approval of work are also examined with due diligence.

### 4. Ad Article 7

A "transfer" within a time limit normally required to comply with the transfer formalities shall be deemed to be carried out "immediately" within the meaning of Article 7 (1). The deadline begins with the submission of a corresponding application and may under no circumstances exceed two months.

5. In the case of carriage of goods and persons in connection with an investment, a Contracting State shall neither eliminate or hinder the transport undertakings of the other Contracting State and, if necessary, issue authorizations for carrying out the transport. This includes carriage by

a) Goods directly intended for investment within the meaning of the Treaty or acquired in the territory of a Contracting State or a third country by an undertaking or on behalf of a company in which assets are invested as defined in the Treaty;

b) Persons traveling in connection with an investment.