

# Agreement between the Federal Republic of Germany and the Republic of Togo on the Promotion of the Investment of Capital

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF TOGO,

DESIRING to deepen economic cooperation between the two countries,

DECLARING to create favorable conditions for the investment of capital by nationals and companies of one State in the territory of the other State;

RECOGNIZING that a contractual protection of these investments is likely to stimulate private economic initiatives and increase the prosperity of both peoples -

HAVE AGREED AS FOLLOWS:

## Article 1.

Each Contracting Party shall, as far as possible, promote the investment of capital by nationals and companies of the other Contracting Parties in accordance with its legislation and shall consider the granting of the necessary authorizations with due diligence.

## Article 2.

(1) A Contracting Party shall treat in its territory investments which are owned or controlled by nationals or companies of the other Contracting Parties no less favorable than investments of their own nationals and companies or investments of nationals and companies of third States.

(2) A Contracting Party shall, in its territory, not subject the nationals and companies of the other Contracting Parties, in connection with their investments, to less favorable conditions in professional and economic matters than their own nationals and companies or nationals and companies of third States. The same applies to the administration, use and use of these investments.

## Article 3.

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

(2) Investments of nationals and companies of a Contracting Party may only be expropriated in the territory of the other Contracting Parties for the general good and for compensation. The compensation must correspond to the value of the expropriated investment, be actually usable and freely transferable, and be made without delay. At the latest at the time of expropriation, provision must be made for the setting and performance of the compensation. The legality of the expropriation and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals and companies of a Contracting Party whose investments are damaged by armed conflicts, revolution or turmoil in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of reimbursements, severance payments, compensation or other indemnities than their own Nationals and companies. With regard to the transfer of such services, the Contracting Parties undertake not to treat the nationals and companies of the other Contracting Parties less favorably than in the case of nationals and companies of a third State.

(4) Paragraphs 1, 2 and 3 shall also apply to income from investments.

(5) With regard to the matters governed by this Article, the nationals and companies of a Contracting Party shall enjoy most-favored-nation treatment on the territory of the other Contracting Party.

## **Article 4.**

Each Contracting Party shall allow the nationals and companies of the other Contracting Parties to transfer the capital, the income of their investments and, in the case of liquidation, the transfer of the proceeds.

## **Article 5.**

Where a Contracting Party makes payments to one of its nationals or one of its companies on the basis of a guarantee for an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party pursuant to Article 11, recognize the transfer of all rights and claims of that national or of that company to the former By virtue of law or on the basis of a legal transaction, as well as the entry of this contracting party into all such rights and claims. Article 3 (2), (3) and (4) and (4) shall apply mutatis mutandis to the transfer of the payments to be made to the Contracting Party.

## **Article 6.**

(1) Provided that the parties concerned are not subject to a derogation with the approval of the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 3 (2), (3) and (4) shall take place immediately and in accordance with Article 4 or Article 5 The rate valid for current transactions on the day of the transfer.

(2) The rate valid for current transactions is based on the par value (par value) agreed with the International Monetary Fund and must be parity (parity) within the fluctuation margin permitted under Article IV (3) of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party at the time of transfer, as defined in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US dollar or any other freely convertible currency or gold shall be applied. Where such a price is not fixed, the competent authorities of the Contracting Party in whose territory the investment is situated shall allow a conversion rate which is fair and fair.

## **Article 7.**

If, under the legislation of a Contracting Party or under obligations under international law which exist or are established in the future between the contracting parties, a system whereby the investments of the nationals and companies of the other Contracting Parties provide for more favorable treatment than under this Treaty, This provision shall remain unaffected by this Agreement. Each Contracting Party shall comply with any other obligation which it has assumed in relation to the investments of nationals or companies of the other Contracting Parties.

## **Article 8.**

(1) The term "investments" includes all assets, in particular but not exclusively:

- a) Ownership of movable and immovable property, as well as other rights in rem, such as mortgages, lien, usufruct or the like;
- b) Share rights in companies and other types of participations;
- c) Claims for money or services having an economic value;
- d) Copyright, industrial property rights, technical procedures, trade names and goodwill;
- e) Operating concessions on the basis of public law, including concessions for the purpose of exploring, promoting or extracting mineral resources which give their holders a legal position of a certain duration.

A change in the form in which assets are invested does not affect their property as an investment.

(2) The term "earnings" means those amounts which are attributable to an investment as profit or interest.

(3) The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) With regard to the Republic of Togo:

Those persons who are Togolese according to the legal and administrative regulations of the Togolese citizenship.

(4) For the purposes of this contract, the term "companies"

a) In respect of 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 territory of the Federal Republic of Germany and who is legally entitled under the laws, whether the liability of its members, members or members Limited or unrestricted and whether their activity is directed towards profit or not;

b) With regard to the Republic of Togo:

Any legal person established in the territory of the Republic of Togo, constituted by the association or consortium of two or more persons who have become parties to a Community action in order to share the resulting profit.

## **Article 9.**

The provisions of this Agreement shall also be subject to investments made by nationals and companies of one Contracting Party after 27 April 1958 in accordance with the laws of the other Contracting Parties in their territory. The agreement of 27 February 1953 on German foreign debt shall remain unaffected.

## **Article 10.**

Each Contracting Party grants national treatment under this Treaty on account of the fact that, in the same matters, treatment by the other Contracting Party is granted by the other Contracting Party.

## **Article 11.**

(1) Any disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute 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 order the chairman within three months after the one party to the agreement has informed the other that they intend to submit the dispute to an arbitration court.

(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 either Contracting Party or if he is also prevented from attending, the next member of the Court of Justice 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.

## **Article 12.**

The provisions of this Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which may be permitted on the basis of the general rules of international law. Measures of this kind will be lifted no later than the actual termination of the dispute, irrespective of whether the diplomatic relations are restored.

## **Article 13.**

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 7, which relate to aviation, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Republic of Togo within three months after the entry into force of this Treaty ,

## **Article 14.**

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

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended indefinitely unless terminated in writing by one of the two Contracting Parties a year before its expiry. 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 the contract, Articles 1 to 13 shall continue to apply for a further twenty years from the date of termination of this Agreement.

DONE at Bonn on 16 May 1961 in four copies, of which two are in the German and two in the French language, each text being equally authentic.

For the Federal Republic of Germany:

von Brentano

For the Republic of Togo:

J. Freitas

At the time of the signing of the Treaty on the Encouragement of Capital Investments, concluded between the Federal Republic of Germany and the Republic of Togo, the undersigned Plenipotentiaries have agreed on the following arrangements which shall be considered as forming an integral part of the Treaty

(1) Article 2 shall not apply to entry, residence and employment as an employee.

(2) The Contracting Parties shall, within a reasonable period of time, enter into negotiations for the conclusion of a Convention on Establishment which shall regulate matters relating to the following matters

Entry and exit, temporary and permanent residence, protection against expulsion, admission to and exercise of economic and professional activities, establishment of companies without capital limitation and participation in companies, work permits for managerial and technical personnel, protection and security of person and property, free access to courts of law, freedom to conclude contracts, acquisition of real estate and other property, admission to the office of arbitrator.

(3) For the purposes of Article 2, "less favourable conditions" shall include, inter alia, restrictions on the acquisition of raw and secondary materials, power and fuel, and means of production and operation of any kind, restrictions on the sale of products within the country and abroad, and other measures having similar effects. Measures taken for reasons of public safety, order, health or morality shall not be considered as "less favorable conditions" within the meaning of Article 2.

(4) The provisions of Article 3(2) shall also apply to the transfer of an investment into public ownership, and to any other measures of deprivation or limitation of an investment by the public authorities amounting to expropriation or nationalization.

(5) Any disposal carried out with a view to relinquishing all or part of the investment shall also be deemed to be a "liquidation" within the meaning of Article 4.

(6) Any transfer which takes place within the period normally required for compliance with the transfer formalities shall be considered to be effected "without delay" within the meaning of Article 6, paragraph 1 above. The time limit shall begin to run on the date on which the corresponding request is made and shall in no case exceed two months.

(7) Each Contracting Party shall refrain from taking any measures contrary to the principles of free competition and likely to eliminate or hinder the participation of the maritime and air navigation of the other Contracting Party in the transport of goods intended for investment within the meaning of this Treaty.

This provision shall also apply to goods acquired with funds from an enterprise in which investments have been made within the meaning of this Treaty.

DONE at Bonn on 16 May 1961 in four copies, two of which are in the German and two in the French language, each text being equally authentic.

For the Federal Republic of Germany:

von Brentano

For the Togolese Republic:

J. Freitas

1.

The Minister of State for Foreign Affairs of the Togolese Republic

Bonn, 16 May 1961

Dear Minister

Referring to the Treaty signed today between the Togolese Republic and the Federal Republic of Germany concerning the encouragement of capital investments, I have the honour to confirm that in the course of our negotiations, an additional agreement has been reached on the following point

"Each Contracting Party may, in the interest of its national economy, when admitting an investment by nationals or companies of the other Contracting Party, in the admission acts lay down conditions concerning the administration and management, use or enjoyment of an investment and concerning the training and employment of its nationals.

Such conditions may, notwithstanding the provisions of Article 2, paragraph 2, be less favorable than those which would be enjoyed by its own nationals and companies, but shall not affect directly or indirectly the other provisions of this Treaty."

I should be grateful if you would confirm this agreement.

Yours sincerely

J. Freitas

His Excellency

Minister of Foreign Affairs of the Federal Republic of Germany

Mr. Heinrich von Brentano

Bonn

The Federal Minister for Foreign Affairs

Bonn, May 16, 1961

Mr. Minister,

I have the honor to acknowledge receipt of your letter of May 16, 1961, which reads as follows:

"With reference to the agreement signed today between the Republic of Togo and the Federal Republic of Germany on the promotion of the investment of capital, I have the honor to confirm that during our negotiations additional agreement was reached on the following:

"Each Contracting Party may, in the interest of its national economy, when admitting an investment of capital by nationals or companies of the other Contracting Party, lay down conditions in the instruments of admission with regard to the

management, use or enjoyment of an investment of capital and with regard to the training and employment of its nationals. Such conditions may, notwithstanding paragraph 2 of Article 2, be less favorable than those applicable to the other Party's own nationals and companies; but they shall not directly or indirectly affect the other provisions of this Treaty.

I should be obliged if you would confirm this understanding."

I have the honor to confirm the foregoing understanding. Please accept, Sir, the assurance of my highest consideration.

von Brentano

To His Excellency

the Minister of State of the Republic of Togo

Mr. Paulin Jacintho Freitas

2.

The Minister of State for Foreign Affairs

of the Togolese Republic

Bonn, 16 May 1961

Dear Minister

With reference to the Treaty signed today between the Togolese Republic and the Federal Republic of Germany on the encouragement of capital investments, I have the honor to confirm that in the course of our negotiations, an additional agreement was reached on the following point:

"In view of the special regulations currently governing monetary relations between the members of the Franc Zone, the provisions of this Treaty concerning the obligations of the Togolese Republic and relating to the transfer shall apply to a particular investment only after approval of that investment by the Government of the Togolese Republic or - in the event that Togolese legislation does not require such approval - after a declaration by the Government of the Togolese Republic by which it assumes the above-mentioned obligations in respect of the investment in question."

I would be grateful if you could confirm this agreement.

Please accept, Mr. Minister, the expression of my highest consideration.

J. Freitas

His Excellency

Minister of Foreign Affairs of the Federal Republic of Germany

Mr. Heinrich von Brentano

Bonn

The Federal Minister for Foreign Affairs

Bonn, May 16, 1961

Mr. Minister,

I have the honor to acknowledge receipt of your letter of May 16, 1961, which reads as follows:

"With reference to the agreement signed today between the Republic of Togo and the Federal Republic of Germany concerning the promotion of the investment of capital, I have the honor to confirm that during our negotiations additional agreement was reached on the following:

"In view of the special arrangements currently applicable to monetary relations between the members of the franc zone, the provisions of this Treaty relating to the transfer obligations of the Republic of Togo shall apply to a particular capital investment only after approval of such capital investment by the Government of the Republic of Togo or, if Togolese legislation does not provide for such approval, after a declaration by the Government of the Republic of Togo by which it assumes the said obligations in respect of the capital investment in question.

I would be grateful if you would confirm this agreement."

I have the honor to confirm the foregoing understanding. Please accept, Sir, the assurance of my highest consideration.

from Brentano

To His Excellency

the Minister of State of the Republic of Togo

Mr. Paulin Jacintho Freitas

3.

The Minister of State for Foreign Affairs of the Togolese Republic

Bonn, 16 May 1961

Dear Minister

I have the honor to acknowledge receipt of your letter of May 16, 1961, which reads as follows

"Referring to the Treaty signed today between the Federal Republic of Germany and the Togolese Republic and relating to the encouragement of capital investments, I have the honor to confirm that in the course of our negotiations, an additional agreement has been reached on the following point:

"In order to facilitate and encourage capital investments by German nationals and companies in the territory of the Togolese Republic, the Government of the Togolese Republic, even before the entry into force of an Establishment Convention, the negotiation of which is envisaged, will grant German nationals who in connection with investments of German nationals and companies, who wish to enter and reside and exercise an activity as an employee in the territory of the Togolese Republic, the necessary authorizations, unless reasons of security, public order and health or morality prevent it.

I would be grateful if you would confirm this agreement."

I have the honor to confirm the previous agreement.

Please accept, Mr. Minister, the expression of my highest consideration.

J. Freitas

His Excellency

Minister of Foreign Affairs of the Federal Republic of Germany

Mr. Heinrich von Brentano

Bonn

The Federal Minister for Foreign Affairs

Bonn, May 16, 1961

Mr. Minister,

I have the honor to confirm, with reference to the agreement signed today between the Federal Republic of Germany and the Republic of Togo on the promotion of the investment of capital, that during our negotiations additional agreement was reached on the following:

"With the intention of facilitating and promoting capital investments by German nationals and companies in the territory of the Republic of Togo, the Government of the Republic of Togo will, even before the entry into force of an establishment agreement, the conclusion of which is envisaged, grant the necessary permits to German nationals who wish to enter, reside and carry on business as employees in the territory of the Republic of Togo in connection with capital investments by German nationals and companies, provided that no reasons of public safety and order, public health or morality stand in the way."

I would be grateful if you would confirm this agreement.

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

von Brentano

To His Excellency

the Minister of State of the Republic of Togo

Mr. Paulin Jacintho Freitas