

# Treaty between the Islamic Republic of Mauritania and the Federal Republic of Germany on the Mutual Protection of Capital Investments

The Federal Republic of Germany and the Islamic Republic of Mauritania -

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 the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives 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;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Copyright, industrial property rights, technical procedures, trademarks, trade names, 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 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) With regard to the Federal Republic of Germany:

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

b) As regards the Islamic Republic of Mauritania:

Citizens of Mauritania as defined by Law No 61.112 of 12 January 1961 concerning Mauritanian nationality and Law No 73.010 of 23 January 1973 amending Articles 9, 30 and 58 of that Law.

4. The term "companies"

a) With regard to 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 is domiciled in the German area of application of this contract and is justly entitled under the laws, whether the liability of its partners. Members or members, or whether their activities are directed at profit or not;

b) As regards the Islamic Republic of Mauritania:

Any legal person as well as any commercial or other company, any association of persons or any association with or without legal personality domiciled in the territory of Mauritius and which, according to the laws of Mauritania, are justified, irrespective of the liability of their partners. Shareholders or members are restricted or unrestricted and whether or not their activities are directed at profit.

## **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 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 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 the privileges conferred by a Contracting Party on account of its membership in a customs, economic or commercial market or a free trade area or because of its association with the nationals or companies of third countries.

## **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 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 expropriation or nationalization became public. 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 measures, appropriate provision must be made for the setting and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measures 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 are 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) Licensing and other fees for the rights defined in Article 1 (1) (d);

e) Of the liquidation proceeds in the event of the complete or partial sale of the investment.

## **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, the 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 Article 4 (2) or 3, Article 5 or 6 shall be valid without delay for the agreed currency Course.

(2) This rate must correspond to the 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 agreement with 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 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 arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by law or by virtue of a legal transaction 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 with the exception of the provisions of Protocol 6 to Aeronautics for the Land of Berlin, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Islamic Republic of Mauritania 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 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, 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, December 8, 1982, in two originals, each in the French and German languages, each text being equally authentic.

For the Federal Republic of Germany

von Staden

For the Islamic Republic of Mauritania

Babaly

## **Protocol**

At the time of signing the Treaty on the Encouragement and Mutual Protection of Capital Investments between the Islamic Republic of Mauritania and the Federal Republic of Germany, the undersigned plenipotentiaries have further agreed on the following arrangements which shall be considered as an integral part of the Treaty;

(1) Ad Article 1

(a) The proceeds of the investment and, in the case of reinvestment, the proceeds of their reinvestment shall enjoy the same protection as the investment.

(b) Without prejudice to other procedures for determining nationality, a person shall be considered a national of a Contracting Party if he holds a national passport issued by the competent authorities of that Contracting Party.

(2) Ad Article 2

Investments made in accordance with the legislation of one of the Contracting Parties within the scope of its law by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

(3) Ad Article 3

(a) The following shall be considered as "activity" within the meaning of paragraph 2 of Article 3, in particular, but not exclusively: the administration, use, enjoyment, and operation of an investment. Less favourable treatment" within the meaning of Article 3 shall include any restriction on the purchase of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale of products within the country and abroad, and any other measures having a similar effect. Measures taken for reasons of public safety, order, health, or morality shall not be considered "less favorable treatment" within the meaning of Article 3.

(b) The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and residence by persons of a Contracting Party who wish to enter the territory of the other Contracting Party in connection with a capital investment and its implementation; the same shall apply to workers of a Contracting Party who wish, in connection with an investment, to enter the territory of the other Contracting Party and to reside there for the purpose of carrying on a remunerated activity. Applications for work permits shall also be given sympathetic consideration.

(4) Ad Article 4

(a) "Expropriation" means the withdrawal, or limitation amounting to withdrawal, of any property right which, alone or in conjunction with other rights, constitutes a capital investment.

(b) Compensation may also be claimed if there has been State intervention in the company which is the subject of the capital investment and if the economic substance of the company has thereby been substantially impaired.

(5) Ad Article 7

A transfer shall be deemed to have been effected "without delay" within the meaning of paragraph 1 of Article 7 if it takes place within the period of time normally required for compliance with the transfer formalities. The time limit shall begin to run on the date of

The time limit shall begin to run on the date of the submission of a request therefor and shall in no case exceed two months.

(6) In the case of transportation of goods or persons in connection with the execution of capital investments, the Contracting Parties shall not exclude or hinder the transportation companies of the other Contracting Party and, if necessary, shall grant the necessary authorizations for the transportation.

This provision applies to the carriage of:

(a) Goods which are intended directly for a capital investment within the meaning of this Treaty or which are purchased in the territory of a Contracting Party or of a third State by an enterprise or on behalf of an enterprise in which funds within the meaning of this Treaty are invested;

(b) persons who travel in connection with the execution of capital investments.

DONE at Bonn, this 8th day of December 1982, in duplicate in the French and German languages, both texts being equally authentic.

For the Federal Republic of Germany

VON STADEN

For the Islamic Republic of Mauritania

BABALY