

Treaty between the Federal Republic of Germany and the Republic of the Sudan concerning the Encouragement of Investments

THE FEDERAL REPUBLIC OF GERMANY and THE REPUBLIC OF THE SUDAN

Desiring to intensify economic cooperation between both States,

Intending to create favourable conditions for investments by nationals or companies of either State in the territory of the other State, and

Recognizing that a contractual protection of such investments is apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:-

Article 1.

Each Contracting Party shall in its territory admit investments, in accordance with its legislation, policies and administrative practices, by nationals or companies of the other Contracting Party and promote such investments as far as possible. It shall treat these investments in a fair and equitable manner.

Article 2.

(1) Investments owned by, or under the effective control of, nationals or companies of either Contracting Party shall in the territory of the other Contracting Party not be treated less favourably by that Party than it treats investments of its own nationals or companies or investments of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards occupational or business matters in connection with investments made by them, to conditions less favourable than it imposes on its own nationals or companies or on nationals or companies of any third State. The same shall apply in respect of the management, use, or enjoyment of such investments.

Article 3.

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

(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected; it shall be actually realizable, freely transferable, and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party who owing to war or other armed conflict, revolution or revolt in the territory of the other Contracting Party suffer the loss of investments situate there, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. With respect to the transfer of such payments, each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions of paragraphs 1, 2 and 3 above shall likewise apply to returns from investments.

(5) The nationals and companies of either Contracting Party shall enjoy most-favoured nation treatment in the territory of

the other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall guarantee to nationals or companies of the other Contracting Party the transfer of the capital, of the returns from the investment and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If a Contracting Party makes payment to any of its nationals or companies under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 11, recognize the transfer of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party by virtue of law or of legal transaction to any such right or title (devolved interest) which the former Contracting Party is entitled to exercise to the same extent as its predecessor in title. As regards the transfer of payments to be made by virtue of the devolved interest to the Contracting Party concerned, paragraphs 2, 3, 4 and 5 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situate, transfers under paragraphs 2, 3 or 4 of Article 3, under Article 4 or Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange applicable to current transactions shall be based on the par value agreed with the International Monetary Fund and shall be within such spread regarded by the International Monetary Fund as commensurate with the obligations of members under Section 3 of Article IV of the Fund's Articles of Agreement.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of the Contracting Party concerned, the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment is situate shall admit a rate of exchange that is fair and equitable.

Article 7.

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty, result in a position entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments within its territory by nationals or companies of the other Contracting Party.

Article 8.

For the purpose of this Treaty:—

(1) The term "investment" shall comprise every kind of asset and more particularly, though not exclusively:—

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares or other kinds of interest in companies;

(c) Titles to money or to any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, trade-names and goodwill;

(e) Business concessions under public law, including concessions regarding the prospecting for, or the extraction or winning of, natural resources, as give to their holder a legal position of some duration.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term "returns" shall mean the amounts derived from an investment as profit or interest for a specific period.

(3) The term "nationals" shall mean:—

(a) In respect to the Federal Republic of Germany Germans within the meaning of the Basic Law for the Federal Republic of Germany;

(b) In respect of the Republic of the Sudan a person who is a Sudanese within the meaning of the Nationality Act.

(4) The term "companies" shall mean: —

(a) In respect of the Federal Republic of Germany any juridical person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

(b) In respect of the Republic of the Sudan any company with a limited liability incorporated in the territory of the Republic of the Sudan, or any juridical person or any association of persons lawfully constituted in accordance with its legislation.

Article 9.

The present Treaty shall also apply to approved investments made prior to its entry into force but not earlier than the 11th of February 1956 by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 10.

Either Contracting Party shall grant national treatment within the framework of the present Treaty in consideration of the fact that national treatment in like matters is also granted by the other Contracting Party.

Article 11.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be established in each individual case, each Contracting Party appointing one member, and these two members shall then agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral tribunal.

(4) If the periods specified in paragraph 3 have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President should make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right of taking such measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

With the exception of the provisions in paragraph 7 of the Protocol, referring to air transport, the present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Republic of the Sudan within three months from the entry into force of the present Treaty.

Article 14.

(1) This Treaty shall enter into force one month after the day on which the two Contracting Parties notify each other that the constitutional requirements for the ratification of this Treaty have been fulfilled.

(2) This Treaty shall remain in force for a period of five years and shall continue in force thereafter unless, after the expiry of the initial period of five years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Treaty. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investments made prior to the date when the notice of termination of this Treaty becomes effective, the provisions of Articles 1 to 13 shall remain in force for a further period of twenty years from that date.

Done at Khartoum on the 7th Day of February, 1963, in four originals, two in the German and two in the English languages, each text being equally authentic.

For the Federal Republic of Germany:

De Haas

Dr. Kurt Daniel

For the Republic of the Sudan:

A.R. Mirghani

On signing the Treaty concerning the Encouragement of Investments concluded between the Federal Republic of Germany and the Republic of the Sudan the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which should be regarded as an integral part of the said Treaty:-

(1) Re Article 1

Investments made in accordance with the legislation of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Treaty. To the extent that any admission procedures are required for making an investment, such investment shall enjoy this protection from the date the admission has been granted.

(2) Re Article 2

a) The following shall in particular be deemed conditions less favourable as referred to in paragraph 2 of Article 2: restricting the purchase of raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind; impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed conditions less favourable within the meaning of paragraph 2 of Article 2.

b) Either Contracting Party may, in admitting an investment by nationals or companies of the other Contracting Party, agree with them on specific stipulations deviating from the treatment provided for in Article 2. If specific stipulations of that nature have been agreed the provisions of Article 2 shall, to that extent, not be applicable. Such stipulations shall only be effective if the deviating measures have been described in detail and laid down individually in the document of admission or, if no such document of admission is required, in a special written agreement made with the nationals or companies of the other Contracting Party prior to effecting the investment.

c) Paragraph 2 of Article 2 shall not apply to entry, sojourn, and activity as an employee.

(3) Re paragraph 2 of Article 3

Expropriation shall be deemed to be any kind of deprivation by acts of sovereign power of any asset or right which constitutes an investment or is a part thereof, other acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

(4) Re Article 4

a) Liquidation within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

b) Article 4 shall not be applicable to the extent that in respect of an investment foreign exchange has been imported in an inconvertible currency into the territory of the Contracting Party where the investment is made.

(5) Re paragraph 1 of Article 6

A transfer shall be deemed to have been made "without undue delay" within the meaning of paragraph 1 of Article 6 if made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request, fully documented, has been submitted and may on no account exceed two months.

(6) Re paragraph 3 of Article 8

Without prejudice to any other method of determining nationality, any person shall in particular be deemed to be a national of a Contracting Party who is in possession of a national passport issued by the appropriate authorities of the Contracting Party concerned.

(7) Either Contracting Party shall refrain from any measures which, contrary to the principles of free competition, prevent or hinder the participation by sea-going vessels or aircraft of the other Contracting Party in the transportation of goods that represent an investment within the meaning of the present Treaty, or of persons if such transportation takes place in connection with such investment. This also applies to goods acquired in the territory of either Contracting Party or of any third State with the funds of an enterprise in which capital has been invested within the meaning of the present Treaty, and to persons, if such transportation takes place on behalf of such an enterprise.

Done at Khartoum on the 7th Day of February, 1963, in four originals, two in the German and two in the English languages, each text being equally authentic.

For the Federal Republic of Germany:

De Haas

Dr. Kurt Daniel

For the Republic of the Sudan:

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