

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

The Federal Republic of Germany and the Kyrgyz Republic -

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

In the endeavor 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" includes assets of any kind, in particular but not exclusively

- 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 "nationals"

a) In relation to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) With regard to the Kyrgyz Republic:

Natural persons who, according to the law of the Kyrgyz Republic, have the status of a citizen of the Kyrgyz Republic;

4. The term "companies"

a) In relation to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) With regard to the Kyrgyz Republic:

Any legal person registered or established in accordance with the applicable legislation of the Kyrgyz Republic.

## **Article 2.**

(1) Each State Party shall, as far as possible, promote investments in nationals or companies of the other Contracting State in its territory and allow such investments in accordance with its laws. In any case, he will treat capital investments fairly and cheaply.

(2) A State Party shall in no way affect the administration, use, use or use of the investments of nationals or companies of the other Contracting State in its territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each State Party shall treat investment in its territory which is owned or under the influence of nationals or companies of the other Contracting State no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each State Party shall treat nationals or companies of the other Contracting State no less favorably than its own nationals and companies or nationals and companies of third States in respect of its activities in connection with investments in its territory.

(3) This treatment does not relate to prerogatives granted by a Contracting State to nationals or companies of third States because of its membership in a customs or economic union, a common market or a free trade zone or because of its association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting State to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## **Article 4.**

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

(2) Investments by nationals or companies of one of the contracting states may only be expropriated, nationalized or subjected to other measures, the effects of which are equivalent to expropriation or nationalization, in the territory of the other contracting state for the common good and against compensation. The compensation must correspond to the value of the expropriated investment immediately before the actual or impending expropriation, nationalization or comparable measure has been publicly known. Compensation must be paid immediately and must be paid at the usual bank interest rate up to the time of payment; it must actually be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, provision must be made for the determination and payment of the compensation in a suitable manner. The lawfulness of expropriation, nationalization or a comparable measure and the amount of the compensation must be able to be checked in an ordinary legal procedure.

(3) Nationals or companies of a Contracting State who suffer losses in 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, indemnities, compensation or other consideration than its own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting State in the territory of the other Contracting State enjoy most-favored-nation treatment with regard to matters governed by this Article.

## **Article 5.**

Each State Party shall ensure that the nationals or companies 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 in the event of complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

## **Article 6.**

Where a Contracting State makes payments to its nationals or companies 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 nationals or companies by law or by reason of the rights of the former Contracting Party 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 6 shall be effected without delay at the applicable rate.

(2) This rate shall be the same as the exchange rate which would result from the conversion rates which 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 international obligations which exist or are established in the future between the Contracting States, a general or special provision which gives more favorable treatment to the investments of the nationals or companies of the other Contracting State 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 State Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting State.

## **Article 9.**

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

## **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.

(6) If both Contracting States are also Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the Arbitration Rules referred to in paragraphs 2 to 5 of this Article may not be invoked to the extent that the provisions of Article 27 (1) , Where an agreement has been concluded between the national or the company of a Contracting State and the other Contracting State in accordance with Article 25 of the Convention. The

possibility of appealing to the arbitral tribunal referred to in paragraphs 2 to 5 in the event of failure to comply with a decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by law or by law pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting States and a national or a company 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 subject to arbitration at the request of the national or the company 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 arbitral tribunal are appointed by the disputes in accordance with Article 10 (3), and that, in so 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 claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company 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, differences of opinion under this Article shall be subject to arbitration under the aforementioned 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 provisions of this Treaty shall also apply to the applicable Protocol which forms an integral part of the Treaty.

## **Article 14.**

(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, the term of validity shall be extended indefinitely, unless one of the Contracting States terminates the contract in writing with a period of twelve months before the expiry of the contract. 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, Articles 1 to 13 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

For the Federal Republic of Germany

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### **(1. Ad Article 1**

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

b) Without prejudice to other procedures for determining citizenship, any person who has a national passport issued by the competent authorities of the contracting state concerned is deemed to be a national of a contracting state.

### **(2. Ad Article 2**

a) Investments made in accordance with the laws of a contracting state in its territory by nationals or companies of the other contracting state enjoy full protection under this agreement.

b) The agreement also applies in the areas of the exclusive economic zone and the continental shelf, insofar as international law permits the respective contracting state to exercise sovereign rights or sovereign powers in these areas.

### **(3. Ad Article 3**

a) The "activity" within the meaning of Article 3 paragraph 2 is to be viewed in particular, but not exclusively, as the administration, use, use and use of an investment. A "less favorable" treatment within the meaning of Article 3 is to be seen in particular: the different treatment in the event of restrictions on the procurement of raw materials and auxiliary materials, energy and fuels as well as production and operating materials of all kinds, the different treatment in the event of obstructions to the sale of products at home and abroad as well as other measures with a similar impact. Measures to be taken for reasons of public security and order, public health or morality are not considered "less favorable" treatment within the meaning of Article 3.

b) The provisions of Article 3 do not oblige a contracting state to extend tax benefits, exemptions and reductions, which are granted under the tax laws only to natural persons and companies resident in its territory, to natural persons and companies resident in the territory of the other contracting state.

c) The Contracting States will benevolently examine, within the framework of their national laws, applications for entry and residence by persons from one Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same applies to employees of the one Contracting State, who wish to enter and stay in the territory of the other Contracting State in connection with an investment in order to work as an employee. Applications for work permits are also being carefully examined.

### **(4. Ad Article 4**

There is also a right to compensation if government measures intervene in the company that is the subject of the capital investment, thereby significantly impairing its economic substance.

### **(5. Ad Article 7**

A transfer that is carried out within a period that is normally required to comply with the transfer formalities is deemed to have been carried out "without delay" within the meaning of Article 7 (1). The period begins with the submission of a corresponding application and may under no circumstances exceed two months.

### **(6.**

For the transportation of goods and persons in connection with an investment, a contracting state will neither switch off nor hinder the transport companies of the other contracting state and, if necessary, grant permits to carry out the transports. This includes promotions from

a) Goods which are directly intended for capital investment within the meaning of the contract or which are acquired in the territory of a contracting state or a third state by a company or on behalf of a company in which assets are invested within the meaning of the contract;

b) Persons traveling in connection with an investment.