

# Treaty between the Federal Republic of Germany and the Republic of Latvia on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany

and

the Republic of Latvia

Desiring to deepen the economic cooperation between the two States,

Desiring to create favorable conditions for capital investments by investors of one State in the territory of the other State,

Recognizing that the promotion and protection of such investments are likely to stimulate private economic initiative and to increase the prosperity of both countries

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. The term "capital assets" shall include assets of every kind, any change in their form not affecting their character as capital assets, in particular

(a) ownership of movable and immovable property and other rights in rem such as mortgages and liens

(b) shares in companies and other types of participation in companies;

(c) claims to money used to create economic value or claims to benefits that have economic value;

(d) intellectual property rights, such as, in particular, copyrights, patents, utility models, industrial designs, trademarks, trade names, trade and business secrets, technical processes, know-how and goodwill;

(e) concessions under public law, including exploration and exploitation concessions;

2. the term "income" means those amounts that accrue to an investment for a given period of time, such as profit shares, dividends, interest, royalties or other fees;

3. the term "investors" means

a) natural persons

- with respect to the Federal Republic of Germany:

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

- with respect to the Republic of Latvia: permanent residents of the Republic of Latvia within the meaning of the legislation of the Republic of Latvia,

b) companies:

any legal person, as well as any commercial company or other company or association, with or without legal personality, having its registered office in the respective territory of a Contracting Party, whether its activity is profit-making or not.

## **Article 2.**

(1) Each Contracting Party shall, within its territory, encourage as far as possible and in all cases give fair and equitable treatment to investments made by investors of the other Contracting Party.

(2) Neither Party shall in any way interfere with the management, use, enjoyment or enjoyment in its territory of the investments of investors of the other Party by arbitrary or discriminatory measures.

(3) This Treaty shall apply to investments made in accordance with the laws and regulations of the Party in whose territory the investment is located. Each Party shall permit investments by investors of the other Party in its territory in accordance with its laws and regulations. Such investments shall enjoy the full protection of this Treaty.

(4) This Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that the national law of the respective Contracting Party permits the exercise of sovereign rights or powers in these areas.

## **Article 3.**

(1) Each Party shall treat authorized investments in its territory owned or influenced by investors of the other Party no less favorably than investments of its own investors or investments of investors of third States.

(2) Each Party shall treat investors of the other Party no less favorably than its own investors or investors of third States with respect to their operations in connection with authorized investments in its territory.

(3) This treatment shall not apply to privileges accorded by a Party to investors of third States by reason of their membership of, or association with, a customs or economic union or a free trade area.

(4) The treatment accorded in this Article shall not apply to benefits accorded by a Party to third country investors under a double taxation treaty or other agreement on tax matters.

## **Article 4.**

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

(2) Investments of investors of a Party may not be expropriated, nationalized or subjected to other measures equivalent in effect to expropriation or nationalization in the territory of the other Party except for the general good and in return for compensation. The compensation must correspond to the value of the expropriated capital investment immediately before the time when the actual or threatened expropriation, nationalization or comparable measure became publicly known. The compensation

The compensation must be paid without delay and must bear interest at the usual bank interest rate until the date of payment; it must be actually realizable and freely transferable. At the latest at the time of expropriation, nationalization or similar measure, appropriate provision must be made for the determination and payment of the compensation. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be capable of being reviewed in an ordinary legal procedure.

(3) Investors of a Party who suffer losses on investments as a result of war or other armed conflict, revolution, state emergency, or civil commotion in the territory of the other Party shall be treated no less favorably by that Party than its own investors with respect to restitution, compensation, indemnity or other consideration. Such payments shall be freely transferable.

(4) With respect to the matters governed by this Article, the investors of one Party shall enjoy most-favored-nation treatment in the territory of the other Party.

## **Article 5.**

Each Party shall grant to the investors of the other Party the free transfer of payments relating to an investment, including in particular

(a) capital and additional amounts for the maintenance or expansion of the investment

(b) proceeds;

(c) for the repayment of loans;

(d) the proceeds in the event of total or partial liquidation or sale of the investment;

(e) the compensation provided for in Article 4.

## **Article 6.**

Without prejudice to the rights of the first Party under Article 10, where a Party makes payments to its investors under a guarantee in respect of an investment made in the territory of the other Party, that other Party shall recognize the transfer to the first Party of all rights or claims of those investors by operation of law or under a legal transaction. Furthermore, the other Party acknowledges the subrogation of the first-mentioned Party to all such rights or claims (transferred claims) which the first-mentioned Party is entitled to exercise to the same extent as its predecessor in title. Article 4, paragraphs 2 and 3, and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred rights.

## **Article 7.**

(1) Transfers under Article 4, paragraphs 2 or 3, Article 5 or Article 6 shall be effected without delay at the rate prevailing at the time.

(2) This rate shall be the cross rate resulting from the conversion rates which the International Monetary Fund would apply to conversions of the currencies concerned into Special Drawing Rights at the time of payment.

## **Article 8.**

(1) If the legislation of a Contracting Party, or any obligations under international law which exist or may be established in the future between the Contracting Parties in addition to the provisions of this Treaty, provides for a general or special rule which gives more favorable treatment to the investments of the investors of the other Contracting Party than is accorded under the provisions of this Treaty, such rule shall prevail over the provisions of this Treaty to the extent that it is more favorable.

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

## **Article 9.**

This Treaty shall also apply to investments of capital made by investors of one Contracting Party in conformity with the legislation of the other Contracting Party in its territory since January 1, 1949, prior to the entry into force of this Treaty.

## **Article 10.**

(1) Differences of opinion 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 difference of opinion cannot be settled in this way, it shall, at the request of either Contracting Party, be submitted to arbitration.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by the appointment by each Contracting Party of one member and the agreement by both members of the national of a third State to be appointed by the governments of the two Contracting Parties as chairman. The members shall be appointed within two months, and the chairman within three months, after one Contracting Party has notified the other of its intention to submit the dispute to arbitration.

(4) If the time limits referred to in paragraph 3 of this article are not observed, either Contracting Party may, in the absence of agreement to the contrary, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties, or if he is prevented for any other reason, the Vice-President shall make the appointments. If the Vice-President is also a national of one of the two Parties or if he is also prevented from attending, the next ranking member of the Tribunal who is not a national of one of the two Parties shall make the appointments.

(5) The arbitral tribunal shall decide by majority vote. Its decisions shall be binding. Each Contracting Party shall bear the costs of its member and of its representation in the proceedings before the arbitral tribunal; the costs of the chairman and

other costs shall be borne equally by the two Contracting Parties. The arbitral tribunal may make other arrangements as to costs. In all other respects the arbitral tribunal shall regulate its own proceedings.

(6) If both Contracting Parties are also Contracting Parties to the Convention of 18 March 1965 for the settlement of investment disputes between States and nationals of other States, the arbitral tribunal provided for above may not be seized, having regard to the provisions of Article 27, paragraph 1, of the Convention, to the extent that an agreement has been reached between the investors of one Contracting Party and the other Contracting Party in accordance with the provisions of Article 25 of the Convention. The possibility of recourse to the arbitral tribunal provided for above shall not be affected in the case of non-compliance with a decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by operation of law or by virtue of a legal act in accordance with Article 6 of this Treaty.

## **Article 11.**

(1) Disputes concerning investments between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If the dispute cannot be settled within a period of six months from the date of its assertion by either party to the dispute, it shall be submitted to arbitration at the request of the investor of the other Party. Unless otherwise agreed by the parties to the dispute, the provisions of paragraphs 3 to 5 of Article 10 shall apply mutatis mutandis, provided that the appointment of the members of the arbitral tribunal referred to in paragraph 3 of Article 10 shall be made by the parties to the dispute and that, in the absence of compliance with the time limits referred to in paragraph 3 of Article 10, either party to the dispute may, in the absence of any other agreement, request the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. The award shall be enforced in accordance with national law.

(3) The Party to the dispute shall not raise as a defense during arbitration proceedings or the enforcement of an arbitral award the fact that the investor of the other Party has received compensation for part of the damage or the total damage under an insurance policy.

(4) In the event that both Parties have also become Contracting States to the Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States, disputes under this Article between the parties to the dispute shall be submitted to arbitration under the said Convention, unless the parties to the dispute agree otherwise, and each Party hereby expresses its consent to such proceedings.

## **Article 12.**

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

## **Article 13.**

(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 shall remain in force for ten years, after which it shall be extended indefinitely unless either Party denounces it in writing twelve months before its expiration. After the expiry of ten years, the contract may be terminated at any time with twelve months' notice.

(3) For investments made up to the date of entry into force of this Treaty, Articles 1 to 12 shall continue to apply for a further twenty years from the date of entry into force of the Treaty.

Done at Bonn, this 20th day of April 1993, in two originals, each in the German and Latvian languages, both texts being equally authentic.

For the Federal Republic of Germany

Kinkel

For the Republic of Latvia

G. Andrejevs

## Protocol

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Latvia on the Promotion and Reciprocal Protection of Capital Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be deemed to be integral parts of the Treaty:

### (1) Ad Article 1

(a) Income from the capital investment and, in the case of its reinvestment, the income therefrom, shall enjoy the same protection as the capital investment.

(b) Without prejudice to other procedures for determining whether a natural person is an investor, any natural person holding a national identity document issued by the competent authorities of the Party concerned shall, in particular, be deemed to be an investor.

### (2) Ad Article 3

(a) For the purposes of Art. 3(2) shall be deemed to include, but not be limited to, the management, use, enjoyment and enjoyment of a capital investment. "Less favorable" treatment within the meaning of Art. 3 shall be deemed to include, in particular: differential treatment in the case of restrictions on the purchase of raw materials and supplies, energy and fuels, and means of production and operation of all kinds; differential treatment in the case of impediments to the sale of products at home and abroad; and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax advantages, exemptions and reductions which, under the tax laws, are granted only to investors resident in its territory.

(c) The Parties shall, within the framework of their national legislation, give favorable consideration to applications for entry and residence of persons of one Party who wish to enter the territory of the other Party in connection with an investment of capital; the same shall apply to employees of one Party who wish to enter and reside in the territory of the other Party in connection with an investment of capital in order to carry on an activity as an employee. Applications for work permits in connection with a capital investment shall also be given sympathetic consideration.

### (3) Ad Article 4

A claim for compensation shall also exist if the measures referred to in Article 4 substantially impair the economic substance of the enterprise which is the subject of the capital investment.

### (4) Ad Article 5

(a) During a transitional period until the introduction of a national currency, but not later than 31 December 1993, the Republic of Latvia shall make every effort to provide the foreign exchange necessary for the free transfer, in particular for the transfer of earnings.

Notwithstanding the foregoing, compensation under Article 4 of this Treaty shall be freely transferable.

(b) After the introduction of a national currency, or after the expiration of the transitional period referred to above, Article 5 shall apply without restriction.

### (5) Ad Article 7

(a) For the purposes of Article 7, paragraph 1, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally necessary for the observance of transfer formalities. The period shall begin with the submission of an appropriate application and shall under no circumstances exceed two months.

(b) For the Republic of Latvia, the exchange rate to be applied on the date of transfer shall be determined by the Bank of Latvia.

### (6) Transportation clause

In the case of transportation of goods and persons in connection with a capital investment, or engaged in economic activities in connection therewith, a Party shall neither eliminate nor hinder the transportation companies of the other Party

and, if necessary, grant permits for the transportation to be carried out. This includes transports of:

(a) goods directly intended for capital investment within the meaning of the Treaty, or acquired in the territory of a Contracting Party or of a third State by or on behalf of an enterprise in which assets within the meaning of the Treaty are invested;

(b) the above-mentioned persons traveling in connection with an investment.

Done at Bonn this 20th day of April 1993 in two originals, each in the German and Latvian languages, each text being equally authentic.

For the Federal Republic of Germany

Kinkel

For the Republic of Latvia

G. Andrejevs

## **Exchange of Letters**

Bonn, April 20, 1993

Ministry for Foreign Affairs

Republic of Latvia

Dear Federal Minister

On the occasion of the signing of the Treaty between the Republic of Latvia and the Federal Republic of Germany on the Promotion and Mutual Protection of Capital Investments, I have the honor to inform you of the following:

The Government of the Republic of Latvia, having become aware that the competent authorities of the Federal Republic of Germany may grant measures for the promotion of capital investments of German investors in Latvia even before the entry into force of the Treaty, will provisionally apply the Treaty from the date of signature. This declaration is made in the expectation that the Government of the Federal Republic of Germany will consider granting guarantees for capital investments in Latvia even before the Treaty enters into force.

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

G. Andrejevs

Minister of Foreign Affairs of the Republic of Latvia

To the Federal Minister of Foreign Affairs of the Federal Republic of Germany

Dr. K. Kinkel

Bonn

The Federal Minister of Foreign Affairs

Excellency,

Bonn, April 20, 1993

I have the honor to acknowledge receipt of your note of today's date with the following content:

On the occasion of the signing of the Treaty between the Republic of Latvia and the Federal Republic of Germany on the claim and mutual protection of capital investments, I have the honor to inform you of the following:

The Government of the Republic of Latvia, having become aware of the fact that the competent authorities of the Federal Republic of Germany may grant measures for the promotion of capital investments of German investors in Latvia even before the entry into force of the Treaty, will provisionally apply the Treaty from the date of signature. This declaration is made in the expectation that the Government of the Federal Republic of Germany will consider granting guarantees for

capital investments in Latvia even before the entry into force of the Treaty."

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

Kinkel

To the Foreign Minister of the Republic of Latvia

Mr. Georgs Andrejevs