

Agreement between the Government of the Federal Republic of Germany and the Palestine Liberation Organization for the benefit of the Palestinian Authority concerning the Encouragement and Reciprocal Protection of Investments

The Government of the Federal Republic of Germany and the Palestine Liberation Organization for the benefit of the Palestinian Authority –

Desiring to intensify economic co-operation between both Contracting Parties,

Intending to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both peoples –

Taking into account the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 have agreed as follows:

Article 1.

For the purposes of this Agreement

1. The term "investments" comprises every kind of asset, in particular:

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

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

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility-model patents, industrial designs, trademarks, tradenames, trade and business secrets, technical processes, know-how, and good will;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment;

2. The term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

3. The term "investor" means

(a) Natural persons

– in respect of the Federal Republic of Germany:

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

– in respect of the Palestinian Authority:

Natural persons entitled to vote and having their permanent residence in the territory referred to in Article 1 point 4 subparagraph (b);

(b) Juridical persons

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 respective Contracting Party, irrespective of whether or not its activities are directed at profit;

4. The term "territory" means

(a) In respect of the Federal Republic of Germany:

The territory of the Federal Republic of German including the territorial sea,

(b) In respect of the Palestinian Authority:

The territory under the self-administration of the Palestinian Authority.

Article 2.

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

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

Article 3.

(1) Neither Contracting Party shall subject investments in its territory owned or controlled by investors of the other Contracting Party to treatment less favourable than it accords to investments of its own investors or to investments of investors of non-Contracting Parties to this Agreement.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own investors or to investors of non-Contracting Parties to this Agreement.

(3) Such treatment shall not relate to privileges which either Contracting Party accords to investors of non-Contracting Parties to this Agreement on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of non-Contracting Parties to this Agreement by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4.

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

(2) Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors 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 this Article.

Article 5.

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular

- (a) The principal and additional amounts to maintain or increase the investment;
- (b) The returns;
- (c) The repayment of loans;
- (d) The proceeds from the liquidation or the sale of the whole or any part of the investment;
- (e) The compensation provided for in Article 4.

Article 6.

If either Contracting Party makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 5 shall apply *mutatis mutandis*.

Article 7.

(1) Transfers under Article 4 (2) or (3), under Article 5 or Article 6 shall be made without delay at the market rate of exchange applicable on the day of the transfer. Article 5 or Article 6 shall be made without delay at the market rate of exchange applicable on the day of the transfer.

(2) Should there be no foreign exchange market, the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights shall apply.

Article 8.

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

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

Article 9.

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

(1) Divergencies between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled by the Government of the Federal Republic of Germany and by the Palestinian Authority.

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

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a person as their chairman who is not a national of either Contracting Party. The aforementioned person shall be appointed by the Government of the Federal Republic of Germany and by the Palestinian Authority. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitration 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 representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

(6) If both Contracting Parties have acceded to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, the arbitration tribunal provided for above may in consideration of the provisions of Article 27 (1) of the said Convention not be appealed to insofar as agreement has been reached between the investor of one Contracting Party and the other Contracting Party under Article 25 of the Convention. This shall not affect the possibility of appealing to such arbitration tribunal in the event that a decision of the Arbitration Tribunal established under the said Convention is not complied with (Article 27) or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 6 of this Agreement.

Article 11.

(1) Divergencies concerning investments between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties in dispute.

(2) If the divergency cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other Contracting Party, be submitted for arbitration. Unless the parties in dispute have agreed otherwise, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis on condition that the appointment of the members of the arbitration tribunal in accordance with Article 10 (3) is effected by the parties in dispute and that, insofar as the periods specified in Article 10 (3) are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law. Article 10 (3) to (5) shall be applied mutatis mutandis on condition that the appointment of the members of the arbitration tribunal in accordance with Article 10 (3) is effected by the parties in dispute and that, insofar as the periods specified in Article 10 (3) are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

(3) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(4) In the event of both Contracting Parties have acceded to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, divergencies under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such a procedure.

Article 12.

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13.

The attached Protocol shall form an integral part of this Agreement.

Article 14.

(1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. Decisive is the date of receipt of the last notification. This Agreement shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

(2) In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.

Done at Ramallah on 10 July 2000 in duplicate in the German and English languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany

Horst Freitag

For the Palestine Liberation Organization for the benefit of the Palestinian Authority

Maher Al-Masri

On signing the Agreement between the Government of the Federal Republic of Germany and the Palestine Liberation Organization for the benefit of the Palestinian Authority concerning the Encouragement and Reciprocal Protection of Investments, the plenipotentiaries, being duly authorized, have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement:

1. Ad Article 1

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport or a comparable document issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Contracting Party.

2. Ad Article 2

(a) Investments made, in accordance with the legislation of either Contracting Party, within the territory of that Contracting Party by investors of the other Contracting Party shall enjoy the full protection of the Agreement.

(b) The Agreement shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

3. Ad Article 3

(a) The Palestinian Authority reserves the right to maintain exceptions to the principles of national treatment with regard to the acquisition of immovable property, provided that these exceptions are in accordance with the applicable law and non-discriminatory.

(b) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3 (2): the management, maintenance, use, enjoyment and disposal of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of 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 "treatment less favourable" within the meaning of Article 3.

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

(d) The Contracting Parties shall within the framework of their legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

4. Ad Article 4

A claim to compensation shall also exist when the economic substance of the company in which the investment is made is severely impaired as a result of measures taken by an authority.

5. Ad Article 5

(a) During an interim period until 31 December 2002, the Palestinian Authority will undertake every effort to make foreign exchange available for the free transfer, in particular for the transfer of returns. After this interim period Article 5 shall be applicable without restrictions.

(b) Notwithstanding the above provision, payments of compensation in accordance with Article 4 shall be transferred freely.

6. Ad Article 7

A transfer shall be deemed to have been made "without delay" within the meaning of Article 7 (1) if effected 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 has been submitted and may on no account exceed two months.

7. Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport.