Agreement between the Federal Republic of Germany and the Syrian Arab Republic concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Syrian Arab Republic,

DESIRING to intensify economic co-operation between both States,

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

RECOGNIZING that encouragement and protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both countries,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purpose of the present Agreement

1. The term "investments" 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 of companies and other kinds of interest;

(c) Claims to money utilized with the purpose of creating an economic value or claims to any performance having an economic value;

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

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

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

2. The term "returns" shall mean the amounts yielded by an investment for a definite period as profit, interest or licence fees;

3. The term "nationals" shall mean

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

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

(b) In respect of the Syrian Arab Republic:

Syrian Arabs according to the Syrian constitution and the applicable nationality law in the territory of the Syrian Arab Republic;

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 German area of application of the present Agreement 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 Syrian Arab Republic:

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 Syrian Arab Republic 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.

Article 2.

Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or companies 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.

Article 3.

(1) Neither Contracting Party shall subject investments in its territory owned or controlled by nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third country.

(2) Neither Contracting Party shall subject nationals or companies of the other Contracting Party, as regards their activity in connexion with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals for companies of any third country.

(3) The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals or companies of a third country because of its membership in, or association with, a customs union, an economic union, a common market or a free trade area.

Article 4.

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

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public interest and against compensation. Such compensation shall be equivalent to the value of the investment expropriated; it shall be actually realizable, freely transferable and shall be made without delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law in the country where the investment has been made.

(3) Nationals or companies 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 Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration.

(4) Nationals or 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 5.

Either Contracting Party shall in respect of investments by nationals or companies of the other Contracting Party grant to those nationals or companies the free transfer of:

1. Returns;

2. Royalties deriving from rights as defined in Article 1, paragraph 1, letters d) and (e);

3. Instalments in repayment of loans;

4. Amounts spent for the management of the investment in the territory of the other Contracting Party or a third country;

5. Additional funds necessary for the maintenance of the investment;

6. The value of partial or total liquidation of the investment, including a liquidation effected as a result of any event mentioned in paragraph 3 of Article 4.

Article 6.

In case one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or a company in the territory of the other Contracting Party, the latter shall recognize the subrogation by assignment of the grantor to the rights of the investor, particularly as to damage, if payment has been made under that security to the extent of that payment and within the rights of the investor. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, Articles 4 and 5 shall apply respectively.

Article 7.

(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 situated, transfers under Articles 4, 5 or 6 shall be made without delay in the agreed currency and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) This rate of exchange shall be in accordance with the pertinent regulations of the International Monetary Fund. In cases of doubt the rate of exchange shall be based on 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.

(3) If the provisions pursuant to paragraph 2 above are not applicable to either Contracting Party, the official rate fixed by that Contracting Party for its currency in relation to a freely convertible currency shall be applied. If no such rate has been fixed a fair and equitable rate of exchange shall be admitted.

Article 8.

In case either Contracting Party grants more favourable terms to a national or company of the other Contracting Party, such terms shall be observed by the Contracting Party concerned.

Article 9.

(1) Divergencies between the Contracting Parties concerning the interpretation or application of the present Agreement should as far as possible be settled by the Governments of the two Contracting Parties.

(2) If a divergency 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 constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall 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 from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above 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 Court 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 final and 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 the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

(6) Local judicial remedies should be exhausted before any dispute can be submitted to an arbitral tribunal.

Article 10.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations.

Article 11.

With the exception of the provisions in paragraph 7 of the Protocol, which refer to air transport, the present Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Syrian Arab Republic within three months of the date of entry into force of the present Agreement.

Article 12.

(1) The present Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

(2) The present Agreement shall enter into force one month from the date of exchange of the instruments of ratification. It shall remain in force for a period of five years and shall continue in force thereafter for another period of five years and so forth, unless denounced in writing by either Contracting Party one year before its expiration.

(3) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

For the Federal Republik of Germany

Peter Hermes

For the Syrian Arab Republic

Abdullah Azmeh

On signing the Agreement concerning the Encouragement and Reciprocal Protection of Investments, concluded between the Federal Republic of Germany and the Syrian Arab Republic, the undersigned plenipotentiaries 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, any person in possession of a valid passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party.

(2) Ad Article 2

(a) Investments to be made, in accordance with the laws and regulations of either Contracting Party, in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Agreement.

(b) Either Contracting Party may subject investments to prior formal approval in accordance with its respective laws and regulations. Consequently, investments in the territory of the Syrian Arab Republic shall be subject to the present Agreement if prior approval of the investment has been granted by the Ministry of Economy and Foreign Trade of the Syrian Arab Republic for the application of this Agreement.

(3) Ad Article 3

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of paragraph 2 of Article 3: the management, maintenance, use, and enjoyment of an investment. The following shall, In particular, be deemed "treatment less favourable" within the meaning of paragraph 2 of Article 3: restricting the purchase of raw or auxiliary materials, of energy 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 "treatment less favourable" within the meaning of Article 3.

(b) Paragraph 2 of Article 3 shall not apply to entry, sojourn and activity as an employee.

(4) Ad Article 4

The provisions of paragraph 2 of Article 4 shall also apply to the transfer of an investment to public ownership, to the subjection of an investment to public control or to any other measure the effects of which would be tantamount to expropriation or nationalisation. "Expropriation" shall mean the taking away or restricting of any property right which in itself or in conjunction with other rights constitutes an investment.

(5) Ad Article 5

(a) "Liquldation" within the meaning of Article 5 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(b) In the event of liquidation capital invested in the Syrian Arab Republic may be retransferred not later than five years after the date of approval by the Ministry of Economy and Foreign Trade and at a rate of at least one fifth a year of the registered value.

In case the investor, for reasons beyond his control, cannot continue to invest the funds transferred to the Syrian Arab Republic, he may be allowed ins this case to transfer his share in the capital to its place of origin after the expiry of one year from the date of its importation and after the approval of the MinIstry of Economy and Foreign Trade.

(6) Ad Article 7

A transfer shall be deemed to have been made "without delay" within the meaning of paragraph 1 of Article 7 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.

In case of liquidation the said period may on no account exceed six months.

(7) Whenever goods or persons connected with the making of investments are to be transported, either Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transports.

DONE at Damascus on 2nd of August 1977 in duplicate in the German, Arabic and English languages, all three texts being authentic. In case of divergent interpretation of the German and the Arabic texts the English text shall prevail.

For the Federal Republik of Germany

Peter Hermes

For the Syrian Arab Republic

Abdullah Azmeh