

Treaty between the Federal Republic of Germany and Turkmenistan on the Promotion and Mutual Protection of Capital Investments

The Federal Republic of Germany and Turkmenistan -

In the desire to deepen economic cooperation between the two Contracting States,

In the endeavor to create favorable conditions for the investments of nationals or companies of one Contracting State in the territory of the other Contracting 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

- 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) With regard to the Federal Republic of Germany:

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

b) With regard to Turkmenistan:

Natural persons who are nationals of Turkmenistan according to the applicable Law on the Citizenship of Turkmenistan;

4. The term "companies"

a) With regard 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 Turkmenistan:

Any legal person or cooperative or other company or association with legal personality established under the laws of

Turkmenistan and established in its territory.

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 capital investments in its territory which are 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 a Contracting State may be expropriated in the territory of the other Contracting State only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent in their effects to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(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. In addition, the other Contracting State shall recognize the entry into force of all such rights or claims (transferred rights or 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 made on the basis of the transferred claims.

Article 7.

(1) The transfer of payments referred to in Article 4 (2) or (3), Article 5 or 6 shall take place immediately at the applicable rate.

(2) This rate must correspond to the cross-rate, which is derived from the exchange 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 Contracting State 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 contract 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 to appoint the chairman 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, each State Party may request 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, as well as other costs, shall be borne by the two Contracting States. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitration procedure itself regulates.

(6) If both Contracting States are Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of the Convention may not be applied to the above-mentioned arbitration between the national Or the company of a Contracting State and the other Contracting State has concluded an agreement in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction 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 the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any other means of appeal or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The State Party to the dispute shall not assert an objection during the 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 or all of the damage resulting from an insurance.

Article 12.

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

Article 13.

The attached protocol is an integral part of this contract.

Article 14.

(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 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 fifteen years from the date of expiry of the Treaty.

Done at Bonn on August 28, 1997, in two originals, each in the German, Turkmen and Russian languages, each text being authentic. In the event of differences of interpretation between the German and Turkmen texts, the Russian text shall prevail.

For the Federal Republic of Germany

von Ploetz

For Turkmenistan

Gurbanmuradov

Protocol to the Treaty between the Federal Republic of Germany and Turkmenistan on the Promotion and Mutual Protection of Capital Investments

When signing the Treaty between the Federal Republic of Germany and Turkmenistan on the Promotion and Mutual Protection of Capital Investments, the duly authorized representatives also agreed on the following provisions, which shall be deemed an integral part of the Treaty:

(1) Ad Article 1

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

(b) In particular, without prejudice to other procedures for determining nationality, a national of a Contracting State shall be deemed to be any person holding a national passport issued by the competent authorities of that 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 shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the territories of the exclusive economic zone and the continental shelf to the extent that international law permits the respective State Party to exercise sovereign rights or powers in those territories.

(3) Ad Article 3

(a) For the purposes of paragraph 2 of Article 3, "activity" shall mean in particular, but not exclusively, the management, use, enjoyment and enjoyment of a capital investment. Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, differential treatment in the case of restrictions on the supply of raw materials and supplies, energy and fuels, and means of production and inputs 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 State to extend to individuals and companies resident in the territory of the "other Contracting State tax advantages, exemptions and reductions which, under the tax laws, are granted only to individuals and companies resident in its territory.

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

(4) Ad Article 4

An entitlement to compensation shall also exist if the enterprise which is the subject of the capital investment is interfered with by government measures and its economic substance is thereby substantially impaired.

(5) Ad Article 7

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

(6) In the case of transportation of goods and persons in connection with a capital investment, a Contracting State shall neither eliminate nor impede the transportation companies of the other Contracting State and shall, to the extent necessary, grant authorizations to carry out the transportation. This includes transports of

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

b) persons traveling in connection with an investment.