Treaty between the Federal Republic of Germany and the Sultanate of Oman concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Sultanate of Oman

(hereinafter referred to as the "Contracting States" and each referred to as the "Contracting State") –

Desiring to intensify economic co-operation between both countries and create favourable conditions to increase investments by investors of one of the Contracting States in the territory of the other Contracting State,

Recognizing that the encouragement and contractual protection of such investments are apt to increase the prosperity of both nations through their positive effects, such as the stimulation of business initiatives and transfer of capital and technology between the two countries –

Have agreed as follows:

Article 1. Definitions

For the purposes of this Treaty

1. The term "investments" comprises every kind of asset invested in accordance with the laws and regulations of a Contracting State and shall include in particular, though not exclusively:

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

(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 and any other titles to money;

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

(e) Concessions and licences conferred by law or under contract, including concessions to search for, extract, exploit or cultivate natural resources;

Any alteration of the form in which assets are invested or reinvested, done in accordance with the laws and regulations of the Contracting State in the territory of which the investment is made, shall not affect their qualification as investments;

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

3. The term "investor" means

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

– Germans within the meaning of the Basic Law 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 territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit,

(b) In respect of the Sultanate of Oman:

– Any natural person having the nationality of the Sultanate of Oman in accordance with its laws,

– Any juridical person having its seat in the territory of the Sultanate of Oman in accordance with its laws;

4. The term "territory" means the land, air space and territorial sea as well as the exclusive economic zone and the continental shelf where a Contracting State exercises sovereign rights or jurisdiction in accordance with the provisions of international law and its domestic law.

Article 2. Encouragement and Protection of Investments

(1) Each Contracting State shall as far as possible encourage investments by investors of the other Contracting State and create favourable conditions for such investments and shall admit such investments in accordance with its legislation.

(2) Each Contracting State shall in its territory in any case accord investments by investors of the other Contracting State fair and equitable treatment as well as full protection under the Treaty. Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same treatment and protection as the investment under the Treaty.

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

(4) The Contracting States shall within the framework of their legislation consider in good faith applications for the entry and sojourn of persons of either Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same shall apply to employed persons who in connection with an investment wish to enter the territory of the other Contracting State and sojourn there to take up employment. The same also applies to work permits.

Article 3. National Treatment and Most-favoured-nation Treatment of Investments

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

(2) Neither Contracting State shall subject investors of the other Contracting State, as regards their activity, in particular, though not exclusively, concerning management, maintenance, operation, enjoyment or disposal of their investments, to treatment less favourable than it accords to its own investors or to investors of any third State, whichever is more favourable to the investors.

(3) The following shall, in particular, be deemed "treatment less favourable" within the meaning of this Article: 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. 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 this Article.

(4) Such treatment shall not relate to privileges which either Contracting State accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market, a free trade area as well as any other form of regional economic integration or by virtue of any agreements on avoidance of double taxation or other agreements regarding matters of taxation.

(5) Issues of taxation on income and on capital shall be dealt with in accordance with the Agreement for Avoidance of Double Taxation with Respect to Taxes on Income and Capital between the Contracting States. In case there is no such agreement between the Contracting States, the respective national tax law shall be applicable.

(6) The provisions of paragraphs (1) and (2) of this Article shall not oblige the Sultanate of Oman to accord investors of the other Contracting State the same treatment that it accords to its own investors with regard to ownership of lands and real estate. The same applies to grants and soft loans in connection with specific development and social programs.

(7) The investors of either Contracting State are free to choose authorized international means of transport for the transport of persons or capital-goods directly connected with an investment within the meaning of this Treaty without prejudice to relevant bilateral or multilateral agreements binding on either Contracting State.

Article 4. Compensation In Case of Expropriation and Nationalization

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

(2) Investments by investors of either Contracting State shall not directly or indirectly be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting State except, in accordance with the applicable laws of the latter Contracting State for the public benefit, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation has become publicly known.

(3) The compensation shall be paid without delay. It shall carry interest from the date of expropriation until the time of payment at a commercially reasonable interest rate, which is based on the relevant Euribor; 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 for the determination and payment of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law according to the respective national legal system.

(4) Investors of either Contracting State shall enjoy most-favoured-nation treatment in the territory of the other Contracting State in respect of the matters provided for in this Article.

Article 5. Compensation for Losses

(1) Investors of either Contracting State whose investments suffer losses in the territory of the other Contracting State 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 State than that which the latter Contracting State accords to its own investors or investors of any third State whichever is more favourable to the investors. Such payments shall be freely transferable.

(2) The provision of paragraph (1) of this Article shall also apply to investors of one Contracting State who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting State resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Contracting State, or

(b) Destruction of their property by the forces or authorities of the latter Contracting State, which was not caused in combat action or was not required by the necessity of the situation.

Article 6. Transfers

(1) Each Contracting State shall guarantee to investors of the other Contracting State the free transfer of payments in connection with an investment made in its territory, in particular

(a) Capital and additional capital amounts being used to maintain, increase or expand existing investments and any other amounts appropriated for the coverage of expenses connected with the management of the investments;

(b) The returns;

(c) The repayment of loans related to investment;

(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 and Article 5;

(f) Wages, remunerations and accruals of nationals of the other Contracting State and nationals of any other third state who are allowed to engage in activities related to an investment.

(2) Transfers under this Article, Articles 4, 5 and 7 shall be made without delay at the market rate of exchange applicable on the day of the transfer. A transfer shall be deemed to have been made "without delay" 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.

(3) 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 7. Subrogation

If either Contracting State or its designated agency 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 State, the latter Contracting State shall, without

prejudice to the rights of the former Contracting State under Article 9, 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 State. The latter Contracting State shall also recognize the subrogation of the former Contracting State to any such right or claim (assigned claims) which that Contracting State 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 8. Applicability of other Rules and Provisions

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

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

(3) Investments having formed the subject of a special commitment of one Contracting State with respect to an investor of the other Contracting State shall be governed by the terms of the said commitment to the extent that the latter includes provisions more favourable to the investor than those of this Treaty.

Article 9. Settlement of Disputes between the Contracting States

(1) Disputes between the Contracting States concerning the interpretation or application of this Treaty should as far as possible be settled amicably by the governments of the two Contracting States through diplomatic channels.

(2) If a dispute has not been settled within a period of six months from the date on which such negotiations were requested by either Contracting State, it shall upon the request of either Contracting State be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting State 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 States. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting State has informed the other Contracting State 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 State 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 State 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 State 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 State should make the necessary appointments.

(5) The arbitral tribunal shall decide on the dispute in accordance with the provisions of this Treaty and the principles of international law.

(6) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and legally binding. Each Contracting State 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 States. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure. If any dispute should arise between the Contracting States as to the meaning or scope of a decision either Contracting State may request the arbitral tribunal to interpret its decision.

Article 10. Settlement of Disputes between an Investor and a Contracting State

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

(2) If such a dispute cannot be settled within a period of three months from the date of receipt of request for settlement, the dispute shall be submitted at the request of the investor alternatively or consecutively to:

(a) The competent court of the Contracting State in whose territory the investment has been made;

(b) International arbitration under either:

– The Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), or

– The rules of arbitration of the United Nations Commission on International Trade Law (UNCITRAL), or

– The rules of arbitration of the International Chamber of Commerce (ICC), or

– Any other form of dispute settlement agreed upon by the parties to the dispute.

Each Contracting State herewith declares its acceptance of such international arbitral procedures.

(3) An award issued by an arbitral tribunal shall be final and legally binding upon the parties to the dispute and it shall be enforced in accordance with domestic law.

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

Article 11. Scope of Application of the Treaty

(1) This Treaty shall apply to all investments, whether made prior to or after its entry into force, but it shall not apply to any claims or disputes concerning such investments which have been raised or settled between the parties involved prior to its entry into force.

(2) This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting States.

Article 12. Entry Into Force, Duration and Termination

(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 date of exchange of the instruments of ratification. It shall remain in force for a period of twenty years and shall be extended thereafter for a period of fifteen years unless denounced in writing through diplomatic channels by either Contracting State twelve months before its expiration. After the expiry of that latter period it shall remain in force for an unlimited period unless denounced in writing through diplomatic channels by either Contracting State giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Treaty, the provisions of the preceding Articles shall continue to be effective for a further period of twenty years from the date of termination of this Treaty.

(4) Upon entry into force of this Treaty, the Treaty of 25 June 1979 between the Federal Republic of Germany and the Sultanate of Oman concerning Encouragement and Reciprocal Protection of Investments shall terminate.

Done at Muscat on this 30th day of May 2007, corresponding to 13th day of Jumada al-Awal 1428 H in duplicate in the German, Arabic and English languages, all texts being authentic. In case of a divergent interpretation of the German and Arabic texts, the English text shall prevail.

For the Federal Republic of Germany

Klaus Geyer

Michael Glos

For the Sultanate of Oman

Mohammed bin Nasser Al Khusaibi