

TREATY

between the German Democratic Republic and..... on the Promotion and Reciprocal Protection of Investments

The German Democratic Republic and.....

in the desire to further economic co-operation between the two countries,

In an effort to create favourable conditions for mutual investment,

Recognising that the promotion and mutual protection of investments through this Treaty will promote the development of economic initiative

Have agreed as follows:

Article 1. Definitions

(1) Investors within the meaning of this Agreement are deemed to be

- a) nationals of the Contracting States, unless they have their permanent residence in the State in which they make the investment,
- b) legal entities of the Contracting States.

(2) The following shall be deemed to be investments within the meaning of this Treaty

- a) participations in companies of the respective other Contracting State,
- b) other participations in enterprises of the respective other Contracting State,
- c) legally dependent branches or subsidiaries of any kind of legal entities of one Contracting State in the other Contracting State,
- d) lawfully realised income from investments in accordance with letters a) to c).

(3) Companies and enterprises of a Contracting State in which investors of the other Contracting State have an interest within the meaning of this Treaty shall be deemed to be enterprises in which investors of the other Contracting State have an interest.

(4) The assets of an investment pursuant to para. 2 or of an enterprise with the participation of investors of the other Contracting State pursuant to para. 3 shall include in particular

- ownership of movable and immovable property and other rights in rem, such as mortgages and pledges;
- share rights in companies and other types of participations;
- monetary claims and claims to benefits of any kind that have an economic value;
- copyrights, industrial property rights, know-how and goodwill;
- concessions under public law, including mining and extraction concessions.

Article 2. Promotion of the Realisation of Investments

(1) The Contracting States shall, within the framework of their national economic policies, encourage investment by investors of one Contracting State in the other Contracting State, in strict compliance with the law and in the interest of economic progress in both Contracting States.

(2) Each Contracting State undertakes to treat investors of the other Contracting State fairly and equitably at all times in the procedures for the authorisation of investments.

Article 3. Treatment of Investments

(1) Investments made by investors of a Contracting State shall at all times be treated fairly and equitably. They shall enjoy full protection and security in the territory of the other State Party. No State Party shall unreasonably or discriminatorily interfere with the management, utilisation, use and enjoyment of such investments.

(2) Agreements between a State Party and investors of the other State Party shall take precedence over the provisions of this Treaty. Each Contracting State undertakes to honour such agreements.

Article 4. Expropriations

The Contracting States undertake to carry out expropriations directed against investments by investors of the other Contracting State only if the following conditions are met:

- a) for the public interest,
- b) against compensation,
- c) the necessary measures to determine the amount of compensation and the procedure for its payment must have been taken by the time the expropriation is carried out at the latest,
- d) the legality of the expropriation and the amount of compensation must be verifiable in a legally regulated procedure that guarantees the investor a fair hearing.

Article 5. Compensation

(1) Compensation in the case of Article 3 shall correspond to the real value of the expropriated investment.

The compensation shall be due after the expiry of two months from the date of execution of the expropriation and shall thereafter bear interest at normal commercial rates until actual payment.

(2) If investments of investors of one Contracting State suffer losses in the other Contracting State as a result of armed conflict, civil war, state emergency or riot, the investors shall be treated by that Contracting State no less favourably than investors from third States with regard to restitution, compensation, indemnification or other consideration.

Article 6. Transfers

(1) The Contracting States shall ensure the free transfer of the following payments in connection with investments made by investors of one Contracting State in the other Contracting State:

- a) payments in connection with the making, maintenance or expansion of investments,
- b) payments arising out of current operations,
- c) repayment of loans, including interest payments,
- d) income disbursed,
- e) liquidation proceeds, including compensation payments.

Any authorisation requirements for the execution of certain transactions remain unaffected.

(2) The transfer of payments pursuant to paragraph 1 shall be effected without delay, i.e. within the period required to comply with the transfer formalities. This period shall commence upon submission of the application and shall in no case exceed 6 weeks.

(3) The transfer shall be made in freely convertible currency. When converting the national currency into a freely convertible

currency, the official exchange rate of the country from which the payment is made shall be applied. In the event of split exchange rates, the most favourable rate for current transactions shall be applied.

Article 7. Subrogation

(1) If a Contracting State or an agency authorised by it makes payments to its investors on account of the occurrence of non-commercial risks in the territory of the other Contracting State in which the investment was made, that other Contracting State shall recognise the succession of the first-mentioned Contracting State or agency to the rights and claims of the investor to the extent of the payment made.

(2) Notwithstanding paragraph 1, the Contracting State to which these rights and claims have been transferred may instruct its investor to assert the transferred rights and claims. This shall apply mutatis mutandis to the authorised agency of a Contracting State to which the rights and claims have been transferred.

Article 8. Most-favoured-nation Treatment

(1) For the rights referred to in Art. 3 to 7, the Contracting State in which an investment was made by investors of the other Contracting State shall grant most-favoured-nation treatment.

(2) Most-favoured-nation treatment shall not apply to privileges accorded by a Contracting State to investments or investors of third States by reason of their membership in an economic community, a zone or a free trade area or by reason of their association with such economic communities.

It also does not apply to advantages resulting from agreements between neighbouring states on economic cooperation or from agreements under international law on tax issues.

Article 9. Enterprises with Participation of Investors of the other Contracting State

(1) Each Contracting State shall treat enterprises with the participation of investors of the other Contracting State no less favourably than enterprises with the participation of investors of third States, subject to the exceptions to most-favoured-nation treatment set forth in Article 7(2).

(2) In the event of expropriation of the assets of such an enterprise by a Contracting State, the investor of the other Contracting State shall have its own right of action, including recourse to the arbitral tribunal provided for in Article 10.

Article 10. Disputes between an Investor and a Contracting State

(1) Differences of opinion concerning an investment between a Contracting State and an investor of the other Contracting State shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If differences of opinion are not so settled, they shall be decided in accordance with the procedures provided for by the national law of the Contracting State in which the investment was made.

(3) Notwithstanding para. 2, in the cases referred to in Art. 4, 5 or 6, both parties to the dispute shall be entitled to refer the dispute to an international arbitral tribunal within six months of the initiation of proceedings pursuant to para. 2.

(4) Unless the parties to the dispute agree otherwise, the arbitral tribunal shall be constituted for each individual case by each party to the dispute appointing one member and both members selecting a national of a third State to be appointed as chairman of the arbitral tribunal after approval by the parties to the dispute. The members shall be appointed within two months after one party to the dispute has notified the other that it wishes to submit the dispute to arbitration.

The chairman shall be appointed within two months of the appointment of the other two members.

(5) If the time limits referred to in paragraph 4 are not observed, either party to the dispute may, in the absence of any other agreement, request the President of the Arbitral Tribunal at the Federal Chamber of Commerce, Vienna, Austria, to make the necessary appointments.

(6) The Arbitral Tribunal shall decide on the basis of the legal provisions in force in the Contracting State in which the investment was made, the agreements reached between the parties to the dispute and this Treaty. The arbitral tribunal shall decide by majority vote; the decision shall be final and binding.

(7) Unless the parties to the dispute agree otherwise, the arbitration proceedings shall be conducted in accordance with the

UNCITRAL Arbitration Rules of 1976.

(8) The arbitral award shall be recognised and enforced in accordance with the rules of the Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 11. Disputes between the Contracting States

(1) Differences of opinion between the Contracting States concerning the interpretation or application of this Treaty shall, as far as possible, be settled by diplomatic means.

(2) If differences of opinion are not settled in this way within six months of the commencement of negotiations, they shall, unless the Contracting States otherwise agree, be submitted to arbitration at the request of either Contracting State.

(3) The arbitral tribunal shall be constituted for each individual case by each contracting state appointing one member and both members selecting a national of a third state to be appointed as chairman of the arbitral tribunal after approval by the two contracting states. The members shall be appointed within two months of one Contracting State notifying the other that it wishes to submit a dispute to arbitration. The chairman shall be appointed within two months of the appointment of the other two members.

(4) If the time limits referred to in paragraph 3 are not observed, either State Party may, in the absence of any other agreement, request the Secretary-General of the United Nations to make the necessary appointment.

If the Secretary-General is a national of one of the two States Parties or is otherwise unable to fulfil this function, the following Deputy Secretary-General of the United Nations shall be requested to make the necessary appointments, unless he is a national of one of the States Parties is otherwise unable to fulfil this function.

(5) The arbitral tribunal shall render its decision by majority vote; the decision shall be final and binding.

(6) Each Contracting State shall bear the costs of its arbitrator and its representation in the arbitration. The costs of the chairman and other costs shall be borne equally by the two Contracting States.

(7) In all other respects, the arbitral tribunal shall regulate its own proceedings.

(8) The arbitral tribunal provided for above may not be called upon insofar as the dispute can be decided by an arbitral tribunal in accordance with Art. 10 of this contract or by another arbitral tribunal agreed between the investor of a contracting state and the other contracting state. The possibility of appealing to the arbitral tribunal provided for above in the event that the decision of the arbitral tribunal competent for disputes between the investor of a Contracting State and the other Contracting State is not complied with shall remain unaffected.

Article 12. Temporal Scope of Application

(1) The provisions of Articles 1 to 11 of this Treaty shall apply to investments made by investors of one Contracting State in the territory of the other Contracting State in accordance with the laws of that other Contracting State after the signature of this Treaty.

(2) The arbitration provided for in Article 10 shall apply only to disputes arising after the entry into force of this Treaty.

(3) After the expiry of this Treaty, Articles 1 to 11 shall remain in force for a further 15 years for investments made in accordance with paragraph 1 before its expiry.

Article 13. Final Provisions

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at ... as soon as possible.

(2) The Treaty shall enter into force one month after the exchange of the instruments of ratification. Its period of validity shall be 15 years.

Unless a Contracting State denounces the Treaty in writing twelve months before its expiry, the Treaty shall remain in force until one Contracting State notifies the other in writing of its intention to denounce it. In this case, the Treaty shall cease to be in force twelve months after receipt of the notice of denunciation by the other Contracting State.