

Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments

THE FEDERAL REPUBLIC OF GERMANY and PAKISTAN,

DESIRING to intensify economic co-operation between the two 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 an understanding reached between the two States is likely to promote investment, encourage private industrial and financial enterprise and to increase the prosperity of both the States,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each contracting State hereafter called in this Treaty a Party will endeavour to admit in its territory, in accordance with its legislation and rules and regulations framed thereunder the investing of capital by nationals or companies of the other Party and to promote such investments and will give sympathetic consideration to requests for the grant of necessary permissions. In the case of Pakistan such permissions shall be given with due regard also to their published plans and policies.

(2) Capital investments by nationals or companies of either Party in the territory of the other Party shall not be subjected to any discriminatory treatment on the ground that ownership of or influence upon it is vested in nationals or companies of the former Party, unless legislation and rules and regulations framed thereunder existing at the time of coming into force of this Treaty provide otherwise.

Article 2.

Neither Party shall subject to discriminatory treatment any activities carried on in connection with investments including the effective management, use or enjoyment of such investments by the nationals or companies of either Party in the territory of the other Party unless specific stipulations are made in the documents of admission of an investment.

Article 3.

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

(2) Nationals or companies of either Party shall not be subjected to expropriation of their investments in the territory of the other Party except for public benefit against compensation, which shall represent the equivalent of the investments affected. Such compensation shall be actually realizable and freely transferable in the currency of the other Party without undue delay. Adequate provision shall be made at or prior to the time of expropriation for the determination and the grant of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Party who owing to war or other armed conflict, revolution or revolt in the territory of the other Party suffer the loss of investments situate there, shall be accorded treatment no less favourable by such other Party than the treatment that Party accords to persons residing within its territory and to nationals or companies of a third party, as regards restitution, indemnification, compensation or other considerations. With respect to the transfer of such payments each Party shall accord to the requests of nationals or companies of the other Party treatment no less favourable than is accorded to comparable requests made by nationals or companies of a third party.

Article 4.

Either Party shall in respect of all investments guarantee to nationals or companies of the other Party the transfer of the invested capital, of the returns therefrom and in the event of liquidation, the proceeds of such liquidation.

Article 5.

If a claim arising out of a guarantee given for an investment is brought against a Party, the latter shall without prejudice to its rights under Article 11, be authorised, on the conditions stipulated by its predecessor in title, to exercise the rights having devolved on such Party by law or having been assigned to it by the predecessor in title (devolved interest). As regards the transfer of payments to be made by virtue of the devolved interest to the Party concerned, paragraphs (2) and (3) of Article 3 as well as Article 4 shall apply mutatis mutandis.

Article 6.

(1) Transfers under paragraphs (2) or (3) of Article 3, under Article 4 or Article 5 shall be made without undue delay and at rates of exchange applicable to current transactions on the date the transfer is made. Article 5 shall be made without undue delay and at rates of exchange applicable to current transactions on the date the transfer is made.

(2) The rate applicable to current transactions shall be based on the par value agreed with the International Monetary Fund taking into account the provisions of Section 3 of Article 4 of the Articles of Agreement establishing the International Monetary Fund.

(3) In case no rate of exchange within the meaning of paragraph (2) above exists at the time of transfer the appropriate authorities of the Party in the territory of which the investment is situated shall admit a rate of exchange which is just and reasonable. paragraph (2) above exists at the time of transfer the appropriate authorities of the Party in the territory of which the investment is situated shall admit a rate of exchange which is just and reasonable.

Article 7.

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to the present Treaty, result in a position entitling investments by nationals or companies of the other Party to treatment more favourable than is provided for by the present Treaty, such position shall not be affected by the present Treaty. Either Party shall observe any other obligation it may have entered into with regard to investments by nationals or companies of the other Party.

Article 8.

(1)

(a) The term "investment" shall comprise capital brought into the territory of the other Party for investment in various forms in the shape of assets such as foreign exchange, goods, property rights, patents and technical knowledge. The term "investment" shall also include the returns derived from and ploughed back into such "investment".

(b) Any partnerships, companies or assets of similar kind, created by the utilisation of the above mentioned assets shall be regarded as "investment".

(2) The term "return" shall mean the amounts derived from investments as profits or interest for a specified period.

(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 Pakistan, a person who is a citizen of Pakistan according to its laws.

(4) The term "companies" shall comprise

(a) In respect of the Federal Republic of Germany, any juridical person, any commercial company or any other company or association, with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing in accordance with its legislation, irrespective of whether the liability of its partners, associates or members is

limited or unlimited and whether or not its activities are directed to pecuniary gain;

(b) In respect to Pakistan, any juridical person or any company or association, incorporated in the territory of Pakistan and lawfully existing in accordance with its legislation.

Article 9.

The present Treaty shall also apply to approved investments made prior to its entry into force but not earlier than 1st September, 1954, by nationals or companies of either Party in the territory of the other Party unless in any case it is specifically provided otherwise. This provision shall not affect the Agreement of 27th February, 1953, on German External Debts.

Article 10.

Each Party shall co-operate with the other in furthering the interchange and use of scientific and technical knowledge and development of training facilities particularly in the interest of increasing productivity and improving standards of living in their territories.

Article 11.

(1) In the event of disputes as to the interpretation or application of the present Treaty, the Parties shall enter into consultation for the purpose of finding a solution in a spirit of friendship.

(2) If no such solution is forthcoming, the dispute shall be submitted

(a) To the International Court of Justice if both Parties so agree or

(b) If they do not so agree to an arbitration tribunal upon the request of either Party.

(3)

(a) The tribunal referred to in paragraph (2) (b) above shall be formed in respect of each specific case and it shall consist of three arbitrators. Each Party shall appoint one arbitrator and the two members so appointed shall appoint a chairman who shall be a national of a third country. paragraph (2) (b) above shall be formed in respect of each specific case and it shall consist of three arbitrators. Each Party shall appoint one arbitrator and the two members so appointed shall appoint a chairman who shall be a national of a third country.

(b) Each Party shall appoint its arbitrator within two months after a request to this effect has been made by either Party. If either Party fails to comply with this obligation the arbitrator shall be appointed upon the request of the other Party by the President of the International Court of Justice.

(c) If within one month from the date of their appointment the arbitrators are unable to agree on the chairman of the arbitration tribunal such chairman shall upon the request of either Party be appointed by the President of the International Court of Justice.

(d) If the President of the International Court of Justice is prevented from acting upon a request under sub-paragraph (b) or sub-paragraph (c) of the present paragraph or if the President is a national of either Party the Vice-President shall make the appointment. If the Vice-President is prevented or if he is a national of either Party the appointment shall be made by the seniormost member of the International Court of Justice who is not a national of either Party.

(e) Unless the Parties otherwise decide, the arbitration tribunal shall determine its own rules of procedure.

(f) The arbitration tribunal shall take its decisions by a majority of votes. Such decisions shall be binding upon the Parties and shall be carried out by them.

Article 12.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Parties without prejudice to the right of taking such temporary measures as are permitted under international law and are indispensable for assuring a supervision of investments. Measures of this kind shall be repealed not later than the date of termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

The present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Pakistan within three months from the entry into force of the present Treaty.

Article 14.

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

(2) The present 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 ten years and shall continue in force thereafter for an unlimited period unless notice of termination is given in writing by either Party one year before its expiry. After the expiry of the period of ten years, the present Treaty may be terminated at any time by either Party giving one year's notice.

(3) In respect of investments made prior to the date of expiry of the present Treaty, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years from the date of expiry of the present Treaty.

DONE at Bonn on the twenty fifth day of November in the year nineteen hundred and fifty nine in duplicate. In the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany:

Von Brentano

For Pakistan:

S. A. Hasnie

Protocol

ON SIGNING the Treaty for the Promotion and Protection of Investments concluded between the Federal Republic of Germany and Pakistan, the undersigned plenipotentiaries have, in addition, agreed to the following provisions which should be regarded as an integral part of the said Treaty:-

(1) The Parties shall within one year after signing this Treaty enter into negotiations to conclude an establishment treaty which shall, inter alia, make provision for the following:

Immigration and emigration, temporary and permanent residence, protection from expulsion, taking up and carrying on business and professional activities on a basis of employment or self-employment, particularly in respect of managerial and technical staff, foundation of and participation in enterprises, protection and security of persons and property, free access to courts, freedom to contract, acquisition of real estate and other property and admission as arbitrator.

(2) The following shall in particular be deemed discrimination referred to in Article 2:

Restricting the purchase or raw or auxiliary materials, of power or fuel, or of means of production or operation of any kind, impeding the marketing of products within or outside the country, as well as any other measures not applied to the same extent either to persons residing within the country and to nationals of third states or to investments of such persons.

Measures taken for reasons of public security and order, public health or morality shall not be deemed as discrimination within the meaning of Article 2.

(3) The term "expropriation" within the meaning of paragraph (2) of Article 3 shall also pertain to acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization.

(4) With a view to ensuring an equitable share of cargo to their respective shipping either Party shall abstain from any discriminatory measures which, contrary to the principles of free competition are designed to eliminate or impair the participation of ships of the other Party in transporting the following goods:

(a) Goods which represent an investment and are transported by sea-going vessels,

(b) Goods which for the purpose of operating an enterprise in the territory of one Party are purchased by means of capital invested in the territory of that Party by nationals or companies of the other Party.

(5) Without prejudice to any other method of determining nationality, any person shall be deemed to be a national of a Party who is in possession of a national passport issued by the appropriate authority of the Party concerned or of a valid identity document of one of the following types:

(a) In respect of the Federal Republic of Germany, a valid identity card (Personalausweis) of the Federal Republic of Germany or a valid identity card (Personalausweis) of Land Berlin or a seaman book (Seefahrtbuch) issued by an appropriate authority of the Federal Republic of Germany provided that the bearer of the seaman book is entered therein as a German;

(b) In respect of Pakistan, the documents for determining the nationality of Pakistanis in Germany at a particular time may in addition to the national passports be

(1) Crew Member Certificates in respect of airmen, and

(2) Continuous Discharge Certificates or Nullies in respect of seamen.

DONE at Bonn on the twenty fifth day of November in the year nineteen hundred and fifty nine in duplicate. In the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany:

Von Brentano

For Pakistan:

S. A. Hasnie

Exchange of Notes

1. S. A. HASNIE

Secretary

Ministry of Finance

Government of Pakistan

Bonn, 25 November 1959

Excellency,

It is our understanding that the term "investment" wherever it is used in this Treaty or in the letters annexed refers in respect of Pakistan to investments approved by the Government agencies authorizing such investments. If at any time later free investment is allowed in Pakistan the term "investment" will cover all investments made in the territory of Pakistan.

The same term refers in respect of the Federal Republic of Germany to all investments made in accordance with its legislation.

It is also our understanding that for the purpose of admission of capital investments the value of the assets mentioned in paragraph (1) of Article 8 may be determined by the appropriate agencies of the Party concerned.

I shall be grateful if you would kindly confirm the above understanding.

Accept, Excellency, the assurance of my highest consideration.

S. A. Hasnie

His Excellency

Dr. Heinrich von Brentano

Federal Minister for Foreign Affairs

Bonn

The Federal Minister of Foreign Affairs

Bonn, November 25, 1959

Mr. Secretary of State,

I have the honor to confirm that you have received your letter of 25 November 1959, worded as follows:

"It is our understanding that the term "investment" wherever it is used in this Treaty or in the letters annexed refers in respect of Pakistan to investments approved by the Government agencies authorizing such investments. If at any time later free investment is allowed in Pakistan the term "investment" will cover all investments made in the territory of Pakistan".

"The same term refers in respect of the Federal Republic of Germany to all investments made in accordance with its legislation".

"It is also our understanding that for the purpose of admission of capital investments the value of the assets mentioned in paragraph (1) of Article 8 may be determined by the appropriate agencies of the Party concerned".

"I shall be grateful if you would kindly confirm the above understanding".

I confirm that this expresses our agreement in this matter.

Mr. State Secretary, accept the assurance of my most highest consideration.

Von Brentano

To the State Secretary in the Ministry of Finance

The Government of Pakistan

Mr S. A. Hasnie

Z. Z. Bonn

2. S.A. HASNIE

Secretary

Ministry of Finance

Government of Pakistan

Bonn, 25 November 1959

Excellency,

During our discussion on the type and nature of treatment to be accorded by either Party to the nationals and companies of the other Party we realised that it would be neither desirable nor practicable to comprehend in this Treaty the extent and scope of favours and immunities which may be granted by either Party to the investments of nationals or companies of the other Party in specific cases. It was therefore agreed that without prejudice to the provisions of this Treaty any concessions that are granted by either Party to the nationals or companies of the other Party shall be governed by the documents of admission, namely the Memoranda or the Articles of Association established for the creation and operation of a particular enterprise or such other instruments as either Party may choose keeping in view the requirements of each case

In admitting investments by nationals or companies of the other Party each Party may in the documents of admission mentioned above impose conditions regarding the administration, use or enjoyment of an investment or regarding the operation of an enterprise based on such investment or regarding the training and employment of nationals of the Party concerned. The favours and immunities mentioned in the first paragraph above and the conditions mentioned in the second paragraph above may fall outside the scope of national or most-favoured-nation treatment.

I shall be grateful if you would kindly confirm the above understanding.

Accept, Excellency, the assurance of my highest consideration.

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"I shall be grateful if you would kindly confirm the above understanding".

I note that this is consistent with our understanding of this matter.

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Von Brentano

To the State Secretary in the Ministry of Finance

The Government of Pakistan

Mr S. A. Hasnie

Z. Z. Bonn

3. S.A. HASNIE

Secretary

Ministry of Finance

Government of Pakistan

Excellency,

Bonn, 25 November 1959

It is our understanding that, intending to facilitate and promote investments by German nationals or companies in Pakistan, the Government of Pakistan will, prior to the entry into force of an establishment treaty the negotiation of which has been provided for, grant necessary permits to German nationals who desire to enter, stay and carry on activities in Pakistan in connection with investments by German nationals or companies except in so far as reasons of public security and order, public health or morality may warrant otherwise.

The appropriate Government agencies of the Federal Republic of Germany will endeavour to persuade German nationals or

companies to provide progressive employment aid training facilities for Pakistan nationals.

I shall be grateful if you would kindly confirm the above understanding.

Accept, Excellency, the assurance of my highest consideration.

S.A. Hasnie

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Dr. Heinrich von Brentano

Federal Minister for Foreign Affairs

Bonn

The Federal Minister of Foreign Affairs

Bonn, November 25, 1959

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