

# **Agreement between the Federal Republic of Germany and the Kingdom of Saudi Arabia About the promotion and mutual protection of capital investments**

The Federal Republic of Germany and the Kingdom of Saudi Arabia

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for investments by investors of one State in the territory of the other State,

Recognizing that the promotion and mutual protection of these investments are appropriate to stimulate private economic initiatives and increase the prosperity of both peoples -

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement

1. the term "investments" means assets of any kind held or controlled by an investor of a Contracting Party in the territory of the other Contracting Party under its legislation, in particular but not exclusively

a) Ownership of movable and immovable property as well as other material rights such as mortgages and liens, rights of use and similar rights;

b) Share rights, shares and debentures of companies and other types of rights or interests in companies and securities issued by a contracting party or one of its investors;

c) Claims on money, such as, Eg loans, or to services which have an economic value in connection with investments;

d) Intellectual property rights, including, but not limited to, copyrights, patents, industrial designs, know-how, trademarks, business and trade secrets, trade names, goodwill;

e) A right conferred by law or under a public contract or licenses, permits or concessions issued in accordance with applicable law;

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, in particular profit shares, dividends, interest, royalties, capital gains or other charges or payments;

3. The term "investor"

a) As regards the Kingdom of Saudi Arabia:

I. Natural persons who are nationals of the Kingdom of Saudi Arabia under the legislation of the Kingdom of Saudi Arabia,

II. Any legal entity, with or without legal personality, created under the laws of the Kingdom of Saudi Arabia and headquartered in its territory, Such as corporations, corporations, cooperatives, companies, partnerships, branch offices, funds, organizations, economic associations and other similar legal entities, whether limited or not,

III. The Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, state funds and other similar governmental institutions in Saudi Arabia;

b) With regard to the Federal Republic of Germany:

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

II. Any legal person or any commercial or other company or association with or without legal personality established under its laws and having its seat in the territory of the Federal Republic of Germany, whether or not its activity is directed to profit or not.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investments of investors of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the administration, use, use and use of the investments of investors of the other Contracting Parties or their right to dispose of such investments in their territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each Contracting Party treats investment and income from investments made by investors of the other Contracting Parties at least as favorable as investments and income from investments of third-country investors.

(2) In accordance with its laws and regulations, each Contracting Party treats investment and investment income once again as investment and income from investments of its investors by investors of the other Contracting Parties.

(3) Each Contracting Party shall deal with the investors of the other Contracting Parties in connection with the management, use, use and use of investments, the right to dispose of investments, the means to secure their rights in respect of such investments as transfers and settlements or any associated activity on their investments Territories are no less favorable than their investors or third country investors, whichever is more favorable.

(4) However, the provisions of paragraphs 1, 2 and 3 of this Article do not relate to privileges granted by a Contracting Party to investors of third countries because of their membership in a customs union, an economic union, a common market or a free trade area or their association ,

(5) The treatment provided for in this article does not apply to any benefits granted by a Contracting Party to investors of third countries under a double taxation agreement or other agreements on tax questions

## **Article 4.**

(1) Investments by investors of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments by investors of a Contracting Party may be expropriated by the other Contracting Party only for general welfare and against prompt, appropriate and effective compensation, nationalized or subject to other measures equivalent in their effects to expropriation or nationalization, provided that such measures are not discriminatory; In keeping with general national laws. 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 forthwith and payable until the date of payment at an interest rate determined on the basis of the market interest rate; 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) Investors in a Contracting Party who suffer losses from investments in the territory of the other Contracting Party through war or other armed conflicts shall be treated no less favorably by the Contracting Party with regard to reimbursements, indemnities, compensation or other consideration than their own investors. Such payments must be freely transferable.

(4) In respect of the matters governed by this Article, the investors of a Contracting Party shall enjoy most-favored-nation treatment in the territory of the other Contracting Party.

## **Article 5.**

Each Contracting Party guarantees to the investors of the other Contracting Parties the free transfer of payments in connection with 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.**

If a Contracting Party makes payments to its investors on the basis of a guarantee for an investment or part of an investment in the territory of the other Contracting Party, or if it invests in the rights of such investors with respect to the legal claims relating to such investments, the other Contracting Party shall recognize:

- a) The right of the former Contracting Party on the basis of the entry into these legal claims by law or by law;
- b) That the former Contracting Party is entitled to exercise these rights to the same extent as its predecessor in law, as a result of the entry into these rights or these claims.

## **Article 7.**

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or Article 6, shall take place immediately at the rate applicable.

(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) If, under the law of a Contracting Party, or under international law obligations which exist between the Contracting Parties or which are established in the future, there is a general or special rule which allows the investments of the investors of the other Contracting Parties to be treated more favorably than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with every other obligation which it has assumed in respect of investments in its territory by investors of the other Contracting Parties.

## **Article 9.**

This Agreement shall also apply to investments made by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory before the entry into force of this Agreement.

## **Article 10.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be amicably settled by the Governments of the two Contracting Parties.

(2) If a dispute can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to order the chairman within three months after the one party to the agreement has notified the other that he wishes to submit the dispute to an arbitration court.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party 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 parties or if he is also prevented from doing so, the next member of the Court who is not a national of one of the two contracting parties shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are final and binding. Each Contracting Party shall bear the costs of its member and the advisory costs in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

## **Article 11.**

(1) Disputes with regard to investments between one of the Contracting Parties and an investor of the other Contracting Parties shall be settled amicably as far as possible.

(2) If the dispute can not be settled within six months from the date of its assertion in the manner provided for in paragraph 1, the dispute shall be submitted, at the request of the investor, to the competent court of the Contracting Party in whose territory the investment was made or to an arbitration procedure 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 means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

(1) This Agreement shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.

(2) This Agreement shall enter into force thirty days after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the period of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the Agreement in writing with a period of twelve months before the expiry of the Agreement. After ten years, the Agreement 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 Agreement, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Agreement.

## **Article 14.**

This Agreement shall be replaced by the Agreement on the Law on Guaranteed Private Investments concluded between the Governments of the two Contracting Parties to 5/3/1399 / AH, which corresponds to 2 February 1979, which, with the entry into force of this Agreement, Force.

Done at Riyadh this 29th day of October, 1996, respectively 17/611417/A.H., in two originals, each in the Arabic and German languages, each text being equally authentic.

For the Federal Republic of Germany

Rapke

For the Kingdom of Saudi Arabia

Dr. Ibrahim Al - Assaf

At the time of signing the Agreement between the Federal Republic of Germany and the Kingdom of Saudi Arabia on the Promotion and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have also agreed upon the following provisions, which shall be deemed to be integral parts of the Agreement:

(1) Ad Article 1

Income from investments and, in the event of their reinvestment, the income therefrom, shall enjoy the same protection as that accorded to investments under this Agreement.

(2) Ad Article 2

a) Investments made in its territory by investors of the other Contracting Party in accordance with the legal provisions of that Party shall enjoy the full protection of the Agreement.

(b) The Agreement shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that the sovereign rights or powers of the respective Contracting Party may be exercised in these areas.

(3) Ad Article 3

(a) "Less favorable treatment" within the meaning of paragraph 3 of Article 3 shall be deemed to include, in particular, differential treatment resulting from restrictions on the supply of raw materials and consumables, energy and fuels, and means of production and inputs of all kinds, differential treatment resulting from obstacles to the marketing of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public 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 require a Contracting Party to extend to natural persons and companies resident in the territory of the other Party tax advantages, exemptions and concessions which, under the tax laws, are accorded only to natural persons and companies resident in its territory.

(c) The Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for the entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with a capital investment; the same shall apply to workers of one Contracting Party who wish to enter and reside in the territory of the other Contracting Party in connection with a capital investment in order to exercise an activity as a worker. Applications for work permits shall also be favorably considered.

(4) Ad Article 4

An investor shall be entitled to compensation if government measures interfere with the enterprise which is the subject of the investment and thereby substantially affect its economic substance.

(5) Ad Article 7

For the purposes of Article 7, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time which is normally reasonable for the purpose of complying with the transfer formalities. The time limit shall commence with the submission of a request to that effect and shall not, under any circumstances, exceed two months.

(5) Ad Article 11

An investor from Saudi Arabia, who owns an investment in Germany, may appeal to an international arbitration court even after a dispute has been decided by a German court. An investor from Germany who owns a capital investment in Saudi Arabia shall have the right to resort to international arbitration or to submit the dispute to the local court; however, he shall not be entitled to submit the dispute to international arbitration if a local court in Saudi Arabia has rendered a decision on the dispute.

(6) In the case of claims by goods and persons in connection with a capital installation, a Contracting Party shall neither exclude nor hinder the transport companies of the other Contracting Party and shall grant the necessary authorizations for the execution of the transports.

(7) The Parties agree to hold consultations at the request of either Party to resolve any dispute relating to this Agreement or to discuss any matter relating to the interpretation or application of this Agreement.

Done at Riyadh, 29 October 1996, respectively 17/6/1417/AH. in two originals, each in the German and Arabic languages, each text being equally authentic.

For the Federal Republic of Germany

Rapke

For the Kingdom of Saudi Arabia

Dr. Ibrahim Al-Assaf