

# Agreement

Between the Federal Republic of Germany and the Hashemite Kingdom of Jordan concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and

The Hashemite Kingdom of Jordan hereinafter referred to as the Contracting Parties -

Desiring to intensify economic co-operation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State, and

Recognizing that encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations -

Have agreed as follows:

## Article 1. Definitions

(1) The term investment means every kind of asset invested directly or indirectly by investors of one Contracting Party in the territory of the other Contracting Party, and in particular, though not exclusively, includes:

- a) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;
- b) shares of companies and other kinds of interest in companies;
- c) claims to money or to any performance having an economic value;
- d) intellectual property rights, in particular copyrights, patents, utility-model patents, industrial designs, trade-marks, tradenames, trade and business secrets, technical processes, know-how, and good will;
- e) business concessions under public law, including concessions to search for, extract or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term returns shall mean the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees.

(3) The term investors shall mean

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 Hashemite Kingdom of Jordan:

- A natural person who is a national of the Hashemite Kingdom of Jordan in accordance with its legislation;

- Legal persons or other entities, including companies, corporations, business associations and partnerships which are constituted or otherwise duly organized under the legislation of the Hashemite Kingdom of Jordan and have their effective economic activities in its territory.

## **Article 2. Promotion and Admission**

Each Contracting Party shall in its territory promote as far as possible the investment by investors of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment. Neither Contracting Party 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 Party.

## **Article 3. National Treatment and Most-favoured-nation Treatment**

(1) Neither Contracting Party shall in its territory subject investments owned or controlled by investors of the other Contracting Party, 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 Party shall in its territory subject investors of the other Contracting Party, as regards their activity in connection with investments, to treatment less favourable than it accords to its own investors or to investors of any third State.

(3) Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(5) This treatment shall not apply to privileges in a special economic zone granted without distinction to domestic and foreign investors by a Contracting Party.

## **Article 4. Compensation In Case of Expropriation**

(1) Investments by investors of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party 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 in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Provisions shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving 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) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party 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 Party than that Party accords to its own investors, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors of either Contracting Party shall enjoy mostfavoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

## **Article 5. Free Transfer**

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular

(a) the principal and additional amounts to maintain or increase the investment;

(b) the returns;

(c) the repayment of loans;

(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.

## **Article 6. Subrogation**

If either Contracting Party makes payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such investors to the former Contracting Party. Furthermore, the latter Contracting Party shall recognize the subrogation of that Contracting Party to any such right or claim, which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. The rights of the former Contracting Party under Article 10 shall not be affected. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, paragraphs 2 and 3 of Article 4 as well as Article 5 shall apply *mutatis mutandis*.

## **Article 7. Modalities of Transfer**

(1) Transfers under paragraph 2 or 3 of Article 4, under Article 5 or Article 6 shall be made without delay at the market rate of exchange applicable on the day of the transfer.

(2) 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 8. Other Obligations**

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

(2) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

## **Article 9. Scope of Application**

The present Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

## **Article 10. Settlement of Disputes between the Contracting Parties**

(1) Disputes concerning the interpretation or application of the present Agreement should, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows: Each Contracting Party 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 Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party 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 Party or if he, too, is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting

Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

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

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall be submitted at the request of the investor of the other Contracting Party alternatively or consecutively to:

(a) the competent court of the Contracting Party 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 Party herewith declares its acceptance of such international arbitral procedures.

(3) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said instruments. The award shall be enforced in accordance with domestic law.

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

## **Article 12. Relations**

Between the Contracting Parties

The provisions of the present Agreement shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the rights of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

## **Article 13. Protocol**

The attached Protocol shall form an integral part of this Agreement.

## **Article 14.**

Entry into Force,

Duration and Termination

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

(2) The present Agreement shall enter into force one month after the day 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 denounced in writing through diplomatic channels by either Contracting Party one year before its expiration. After the expiry of the period of ten years the present Agreement may be denounced at any time by either Contracting Party giving one years notice.

(3) Upon entry into force of this Agreement the Treaty between the Federal Republic of Germany and the Hashemite

Kingdom of Jordan concerning the Encouragement and Reciprocal Protection of Investments of July 15, 1974, the associated Protocol and the Exchange of Notes of the same date shall be terminated.

(4) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

Done at Bremen on 13 November 2007 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.

Für die Bundesrepublik Deutschland For the Federal Republic of Germany

K. Burkhardt

Für das Haschemitische Königreich Jordanien For the Hashemite Kingdom of Jordan

Maen Nsour

Protocol

To the Agreement

Between the Federal Republic of Germany and the Hashemite Kingdom of Jordan concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Hashemite Kingdom of Jordan have agreed on the following provisions to the Agreement of 13 November 2007 concerning the Encouragement and Reciprocal Protection of Investments:

(1) Ad Article 1

- a) Invested indirectly means invested by an investor of one Contracting Party through a company which is fully or partially owned by the investor and having its seat in the territory of the other Contracting Party.
- b) Returns from an investment, as well as returns from re-invested returns, shall enjoy the same protection as the original investment.
- c) Without prejudice to any other method of determining nationality, any person in possession of a national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that Party.

(2) Ad Article 2

The Agreement shall also apply to the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

(3) Ad Article 3

- a) The following shall more particularly, though not exclusively, be deemed activity within the meaning of paragraph 2 of Article 3: the management, maintenance, use, and enjoyment of an investment. The following shall, in particular, be deemed treatment less favourable within the meaning of paragraph 2 of Article 3: unequal treatment in the case of restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. 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 Article 3.
- b) The provisions of Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.
- c) The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(4) Ad Article 7

A transfer shall be deemed to have been made without delay within the meaning of paragraph 1 of Article 7 if made 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.

(5) Whenever goods or persons connected with the making of investments are to be transported, either Contracting Party shall neither exclude nor hinder transportation enterprises of the other Contracting Party and shall issue permits as required to carry out such transports. This includes the transportation of

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

b) persons travelling in connection with the making of investments.