

Agreement Between the Islamic Republic of Pakistan and the Federal Republic of Germany on the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany

And

The Islamic Republic of Pakistan

Hereinafter referred to individually as "Contracting State" and collectively as "Contracting States",

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,

Recognizing that the encouragement and protection of such investments can stimulate private business initiative and increase the prosperity of both Contracting States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement

(1) The term "investments" comprises every kind of asset, established or acquired by an investor of one Contracting State in the territory of the other Contracting State in accordance with the laws and regulations of the latter Contracting State, in particular:

- (a) Movable and immovable property, as well as other rights in rem, such as mortgages, liens and pledges;
- (b) Shares of companies and other kinds of interest in companies;
- (c) Claims to money or to any other performance having an economic value associated with an investment;
- (d) Intellectual property rights, in particular copyrights, patents, utility model patents, industrial designs, trade marks, trade names, trade and business secrets, technical processes, know how, and good will;
- (e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

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

Mere construction and service contracts that do not include an investment component do not fall under the definition of investment under this Agreement;

(2) 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 Islamic Republic of Pakistan:

– Pakistanis within the meaning of the laws of the Islamic Republic of Pakistan,

– Any juridical person or any company or association, incorporated in the territory of the Islamic Republic of Pakistan and lawfully existing in accordance with its legislation;

(3) The term "company" or "companies" of a Contracting State means corporations, firms and associations incorporated or constituted or established under the law in force in the territory of a Contracting State whether privately or state owned;

Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting State concerned shall be deemed to be a national of that Contracting State;

(4) The term "returns" means the amount yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

(5) The term "territory" means the land 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. Admission, Promotion and Protection of Investments

(1) Each Contracting State shall in its territory promote as far as possible investments by investors of the other Contracting State and 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 and security in accordance with customary international law. Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.

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

(4) Each Contracting State shall, in its territory, respect and protect intellectual property rights, as defined and referred to in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), of the investors of the other Contracting State, in accordance with its national legislation, rules and regulations.

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

(1) Each Contracting State shall accord to investors of the other Contracting State and their investments owned or controlled by them treatment no less favourable than that it accords to its own investors and their investments or to investors and their investments of any third State.

(2) The following shall, in particular, be deemed "treatment less favourable": 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, 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".

(3) 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 or a free trade area or by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(4) The provisions of this Article do not oblige a Contracting State to extend to investors resident in the territory of the other Contracting State tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

(5) The Contracting States shall within the framework of their national legislation give sympathetic consideration to 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 of either Contracting State who in connection with an investment wish to enter the territory of the other Contracting State and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(6) The investors of either Contracting State are free to choose international means of transport of persons or capital goods connected with an investment within the meaning of this Agreement without prejudice to relevant bilateral or international agreements binding on either Contracting State.

Article 4. Compensation In Case of Expropriation

(1) Investments by investors of either Contracting State shall not 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 State 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. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(2) 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 as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(3) 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. Free Transfer

(1) Each Contracting State shall guarantee all transfers relating to an investment to be made freely and without delay into and out of its territory. Such transfers include:

- (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.

(2) Transfers under this Article, Article 4 (1) or (2) or Article 6 shall be made at the applicable rate of exchange on the day of transfer.

(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.

(4) Subject to the provision of Article 5 (1) a transfer shall be deemed to have been made "without delay" within the meaning of this Article 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.

(5) Notwithstanding the foregoing paragraphs, a Contracting State may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or penal offences;
- (d) Financial reporting or record keeping of transfers when necessary to assist the financial regulatory authorities or the law enforcement initiated by these authorities;

(e) Ensuring compliance with orders or judgments in judicial proceedings; or

(f) Compliance with tax obligations in case of a final liquidation of an investment.

(6) Notwithstanding the provisions of this Article either Contracting State may take safeguard measures in the event of a macro economic imbalance seriously affecting the balance of payments or a threat thereof or where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious difficulties for the operation of its monetary policy or the financial stability. The safeguard measures shall be

(a) Consistent with the Articles of the Agreement of the International Monetary Fund;

(b) Adopted or maintained only if such measures are strictly necessary;

(c) Implemented in an equitable, non-discriminatory and bona fide manner;

(d) Temporary for a period not exceeding six months and eliminated as soon as possible;

(e) Promptly notified to the other Contracting State.

(7) The provisions of this Article shall not be so construed as to prevent a Contracting State from fulfilling in good faith its obligations as a member of an economic and monetary union.

Article 6. Subrogation

If either Contracting State makes a payment to any of its investors under its scheme of guarantees 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.

Article 7. Application of other Rules

(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 Agreement 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 Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

(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, with disputes arising from such obligations being redressed under the terms of the contracts underlying the obligations in accordance with Article 10 (5).

(3) With regard to the treatment of income and assets for the purpose of taxation, precedence shall be given to the application of the agreements in force at the time between the Federal Republic of Germany and the Islamic Republic of Pakistan for the avoidance of double taxation in the field of taxes on income and assets.

Article 8. Scope of Application

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting State in the territory of the other Contracting State consistent with the latter's legislation. However, it shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process.

Article 9. Settlement of Disputes between the Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement should as far as possible be settled by the governments of the two Contracting States.

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

(3) Such arbitration 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 arbitration 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 arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be 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 arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

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

(1) Disputes arising from an investment between a Contracting State and an investor of the other Contracting State which concern an alleged breach of an obligation of a Contracting State under this Agreement 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 in writing by one of the parties in dispute, it shall, at the request of the investor be submitted to:

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

(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) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award 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 insurance contract in respect of all or part of the damage.

(5) If a contract between an investor and a Contracting State provides a dispute resolution mechanism, the investor can invoke only that dispute resolution mechanism concerning the issues arising under that contract. However, in case of issues arising under this Agreement including Article 7 (2), he is entitled to utilize the dispute settlement procedures provided under this Article.

Article 11. Relations between the Contracting States

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting States.

Article 12. Registration Clause

Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated immediately following its entry into force by the Contracting State in which the signing took place. The other Contracting State shall be informed of registration, and of the United Nations registration number, as soon as this has been confirmed by the Secretariat of the United Nations.

Article 13. Entry Into Force, Duration and Termination

- (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 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 be extended thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting State twelve months before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting State giving twelve months' notice.
- (3) In respect of investments made prior to the date of termination of this Agreement, the provisions of the preceding Articles shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.
- (4) Upon entry into force of this Agreement, the Treaty of 25 November 1959 between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments shall be terminated.

Done at Berlin on 1 December 2009 in duplicate in the German and English languages, both texts being equally authentic.

For the Islamic Republic of Pakistan

Waqar A. Khan

Minister of Investment

For the Federal Republic of Germany

P. Ammon

R. Brüderle