

Agreement between the Federal Republic of Germany and the Arab Republic of Egypt concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Arab Republic of Egypt

DESIRING to intensify economic co-operation between both countries,

INTENDING to create favourable conditions for investments by nationals and companies of either country in the territory of the other country and

RECOGNIZING that encouragement and protection of such investments are apt to stimulate the flow of capital to the benefit of the economic prosperity of both countries

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or companies 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.

Article 2.

(1) Neither Contracting Party shall in its territory subject investments completely owned by nationals or companies of the other Contracting Party or in which nationals or companies of the other Contracting Party have a substantial interest, to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third country.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third country.

(3) The treatment so granted shall not apply to privileges which either Contracting Party accords to nationals or companies of a third country because of its membership in, or association with, a customs union, a common market or a free trade area.

Article 3.

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

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public interest and against compensation. Such compensation shall represent the equivalent of the investment expropriated; it shall be actually realizable, freely transferable, and shall be made without delay. Such compensation shall be fixed at the date of expropriation, nationalisation or dispossession. The legality of any such expropriation and the amount of compensation shall be subject to review by local judicial remedies.

(3) Nationals or companies 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 nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration.

(4) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

Article 4.

Either Contracting Party shall in respect of investments by nationals or companies of the other Contracting Party grant to those nationals or companies the free transfer of:

- 1) returns;
- 2) Royalties deriving from incorporeal rights as defined in Article 8, paragraph 1, letters d) and e); Article 8, paragraph 1, letters d) and e);
- 3) Instalments in repayment of loans;
- 4) Amounts spent for the management of the investment in the territory of the other Contracting Party or a third country;
- 5) Additional funds necessary for the maintenance of the investment;
- 6) The value of partial or total liquidation of the investment, including a liquidation effected as a result of any event mentioned in paragraph 3 of Article 3, paragraph 3 of Article 3.

Article 5.

In case one Contracting Party has granted any financial security against non-commercial risks in respect of an investment by a national or a company in the territory of the other Contracting Party, the latter shall recognize the subrogation by assignment of the grantor to the rights of the investor as to damage, if payment has been made under that security to the extent of that payment and within the rights of the investor. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, Articles 3 and 4 shall apply respectively.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under Articles 3, 4 or 5 shall be made without delay in the agreed currency and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange is the official rate fixed by either Contracting Party for its currency in relation to a freely convertible currency, as far as the relevant regulations of the International Monetary Fund are not applicable.

Article 7.

In case either Contracting Party has agreed upon more favourable terms with nationals or companies of the other Contracting Party, such terms shall supersede those specified in this Agreement.

Article 8.

(1) The term "investment" shall comprise every kind of asset accepted in accordance with the respective prevailing legislation of either Contracting Party, and more particularly, though not exclusively,

- 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;
- c) Claims to money utilized with the purpose of creating an economic value or to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, know-how, trade marks and trade-names;
- e) Business concessions under public law, including concessions to search for, extract or exploit natural resources.

Any admitted alternation 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 as profit or interest.

(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 the Arab Republic of Egypt:

Physical persons who, according to the Egyptian legislation are considered citizens of the Arab Republic of Egypt.

(4) The term "companies" shall mean:

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 either Contracting Party and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited. In addition nationals of either Contracting Party must have a substantial interest in the company.

Article 9.

The present Agreement shall also apply to investments by nationals or companies of either Contracting Party, made prior to the entering into force of this Agreement and accepted in accordance with the respective prevailing legislation of either Contracting Party.

Article 10.

(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 country 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 final and 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.

(6) Local judicial remedies should be exhausted before any dispute can be submitted to an arbitral tribunal.

Article 11.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations.

Article 12.

The present Agreement, with the exception of the provisions in paragraph 8 of Protocol, as far as they apply to air transport, 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 the Arab Republic of Egypt within three months from the entry into force of the present

Agreement.

Article 13.

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

(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 five years and shall continue in force thereafter for another period of five years and so forth, unless denounced in writing by either Contracting Party one year before its expiration.

(3) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

For the Federal Republic of Germany

Genschler

For the Arab Republic Egypt

Ismail Fahmy

Protocol

On signing the Agreement concerning the Encouragement and Reciprocal Protection of Investments, concluded between the Federal Republic of Germany and the Arab Republic of Egypt, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

(1. Ad Articles 1 and 2

Investments to be made in accordance with the laws and regulations of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present agreement. Either Contracting Party may subject investments to prior formal approval in accordance with its respective laws and regulations. If an admission procedure is required for making an investment, such investment shall enjoy the protection of the present Agreement as from the date of the issuing of the document of admission.

Such document of admission shall specify the favours, immunities, and conditions which the Contracting Party concerned grants or imposes in respect of the investment admitted. To the extent that the document of admission stipulates deviations from the treatment provided for in Article 2, the provisions of Article 2 shall not be applicable.

Applications for foreign investments in the Arab Republic of the Egypt should be submitted to the General Authority for Arab and Foreign Investments and Free Zones.

(2. Ad Article 2

a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of paragraph 2 of Article 2: the management, maintenance, use, and enjoyment of an investment. The following measures shall, in particular, be deemed "treatment less favourable" within the meaning of paragraph 2 of Article 2 if directed in a discriminatory way against nationals or companies of the other Contracting Party: 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 2.

b) Paragraph 2 of Article 2 shall not apply to entry, sojourn and activity as an employee.

(3. Ad Article 3

The provisions of paragraph 2 of Article 3 shall also apply to any measure of expropriation, nationalisation or dispossession,

either direct or indirect, against investments made by nationals or companies of the other Contracting Party. Expropriation shall mean the taking away of any property right which in itself or in conjunction with other rights constitutes an investment.

(4. Ad Article 4

"Liquidation" within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of, completely or partly giving up the investment concerned;

(5. Ad Article 4

In the event of liquidation the capital invested may be retransferred five years after the date stated, in the, document of admission and, at the, rate of one fifth a year of the registered value.

In case the investor, for reasons beyond his control cannot continue to invest the funds transferred to the Arab Republic of Egypt, he may be allowed in this case to transfer his share in the capital to its place of origin after the expiry of one year from the date of its importation and after the approval of the Managing Board of the General Authority.

(6. Ad Article 6

The term "without delay" within the meaning of paragraph 1 of Article 6 is deemed to be fulfilled if a transfer is made within such period as is normally required for shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

In case of liquidation the said period may on no account exceed six months.

(7. Ad Articles 2 and 8

a) Both Contracting Parties shall come to an understanding in each case with regard to whether the interest held by nationals of either Contracting Party is a substantial interest permitting to exercise control or decisive influence on the company. Should such an understanding not be reached, this case shall be settled under Article 10.

b) Returns from an investment, as well as returns, from reinvested 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 valid national passport, issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that Party.

(8.

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.

DONE at Bonn on 5th July, 1974 in duplicate in the German, Arabic and English languages, all three texts being authentic. In case of divergent interpretation of the German and Arabic texts the English text shall prevail.

For the Federal Republic of Germany

Genscher

For the Arab Republic of Egypt

Ismail Fahmy