Treaty between the Federal Republic of Germany and the Empire of Iran concerning the Promotion and Reciprocal Protection of Investments

PREAMBLE THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY and HIS IMPERIAL MAJESTY THE SHAHANSHAH OF IRAN,

DESIRING to intensify economic co-operation between both 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 a contractual protection of such investments is apt to stimulate private business initiative and to increase the prosperity of both nations,

HAVE AGREED to conclude a Treaty for this purpose and have appointed the following as their plenipotentiaries:

The President of the Federal Republic of Germany:

His Excellency Dr. Franz Josef Bach,

Ambassador of the Federal Republic of Germany,

His Imperial Majesty The Shahanshah of Iran:

His Excellency Dr. Alinaghi Alikhani,

Minister of Economy

Who, having communicated to each other their full powers and found them to be in good and due form, have agreed as follows:

Article 1.

(1) Each Contracting Party shall in its territory admit the investment, in accordance with its legislation, of capital by nationals or companies of the other Contracting Party, promote such investments as far as possible, and give sympathetic consideration to the granting of any relevant permit required.

(2) Investments by nationals or companies of either Contracting Party, or investments in which nationals or companies of both parties participate, shall in the territory of the other Contracting Party not be treated less favourably by that party than it treats investments of its own nationals or companies or investments of nationals or companies of any third State.

Article 2.

Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards occupational or business matters in connection with investments made by them, to conditions less favourable than it imposes on its own nationals or companies or on nationals or companies of any third State. The same shall apply in respect of the management, use or enjoyment of such investments.

Article 3.

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

(2) The investments of nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment affected, it shall be actually realizable, freely transferable, and shall be made without delay. Adequate provision shall have been made at or prior to the time of the expropriation for the determination and the giving of such compensation. Any dispute as to the conformity of such expropriation with the relevant legislation, or as to the amount of compensation shall be subject to review by due process of law in the competent courts of the country where the investment has taken place.

(3) Nationals or companies of either Contracting Party who, owing to war or other armed conflict, revolution or revolt in the territory of the other Contracting Party, suffer the loss of investments situate there, 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. With respect to the transfer of such payments, each Contracting Party shall accord to the requests of nationals or companies of the other Contracting Party a treatment no less favourable than is accorded to comparable requests made by nationals or companies of any third State.

(4) The provision of paragraphs 1, 2 and 3 above shall likewise apply to returns from investments.

(5) The nationals and 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 guarantee to nationals or companies of the other Contracting Party the transfer of the capital, of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If the Government of a Contracting Party makes payment to a person or a company under a guarantee it has granted in respect of an investment, the Government of the other Contracting Party shall recognize, without prejudice to the rights of the Government of the former Contracting Party under Article 11, the transfer of any rights or titles of such person or company to the Government of the former Contracting Party and the subrogation of the Government of the former Contracting Party to such rights and titles.

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 situate, transfers under paragraphs 2, 3 or 4 of Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange effective for current transactions on the day the transfer is made.Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange effective for current transactions on the day the transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below parity admitted under Section 3 of Article IV of the Articles of Agreement of the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of the Contracting Party concerned, the official rate fixed by such Contracting Party for its currency in relation to the US dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the capital is invested shall admit a rate of exchange that is fair and equitable.

Article 7.

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

Article 8.

(1) The term "investment" shall comprise every kind of asset, and more particularly, though not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, pledges, usufructs and similar rights;

b) Shares or other kind of interest in companies;

c) Rights to money or to any performances having an economic value;

d) Copyrights, industrial property rights, technical processes, tradenames, good will; business licences including licences for searching and prospecting and for the winning of natural resources, which give to their holder a legal position of some duration.

Any alteration of the form in which assets are invested shall not affect their character as investment so long as they are related to the purposes for which the investment permit has been issued or for which a new permit has been duly obtained.

(2) The term "returns" shall mean the amounts derived from an investment as profit or interest for a specific period.

(3) For the purposes of this Treaty, 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 Empire of Iran: Iranians within the meaning of the constitutional and other relevant laws of the Empire of Iran.

(4) The term "companies" shall mean:

a) In respect of the Federal Republic of Germany: any juristic 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 and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

b) In respect of the Empire of Iran: any legal personality or corporation or institution whose main headquarter is within the territory of the Empire of Iran and has been conferred with the legal personality according to the laws of Iran.

Article 9.

The present Treaty shall also apply to investments made prior to its entry into force, but not earlier than November 29, 1955, by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 10.

Either Contracting Party shall grant national treatment within the framework of the present Treaty in consideration of the fact that national treatment in like matters is also granted by the other Contracting Party.

Article 11.

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

(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 established in each individual case, each Contracting Party appointing one member, and these two members shall then 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, after either Contracting Party has made known to the other Contracting Party that it wants the dispute to be submitted to an arbitral tribunal.

(4) If the periods specified in paragraph 3 have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, 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 costs of its own member and of its counsel in the arbitral proceedings; the costs 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 if the Contracting Parties so agree. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right 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 the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 13.

With the exception of the provisions in paragraph 12 of the Protocol, referring to air transport, 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 Imperial Iranian Government within three months from the entry into force of the present Treaty.

Article 14.

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

(2) The present Treaty 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 except if denounced in writing by either Contracting Party one year before its expiration. After the expiry of the period of ten years the present Treaty may be denounced at any time by either Contracting Party giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, 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 Treaty.

DONE at Tehran on this day of November 11th, 1965, in six originals, two in German, two in Persian and two in English, all six texts being equally authentic. In case of divergent interpretation of the German and Persian texts, the English text shall be authoritative.

For the Federal Republic of Germany

Dr. F. J. Bach

For the Empire of Iran

Dr. A. Alikhani

PROTOCOL

On signing the Treaty concerning the Promotion and Reciprocal Protection of Investments concluded between the Federa Republic of Germany and the Empire of Iran, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Treaty:

(1)

(a) In the case of a discrepancy between the provisions of this Treaty and the national laws, the former shall prevail. The permits shall be in accordance with the relevant legislation of the country where the investment is to be made and shall not be issued contrary to the provisions of this Treaty.

(b) Investments in the territory of the Empire of Iran shall be subject to the present Treaty if they have been admitted by the Government of Iran or an agency designated by it.

(2) Either Contracting Party shall be entitled to claim most-favoured nation treatment by virtue of the provisions of Article 1, paragraph 2, Article 2, and Article 3, paragraphs 3 to 5, only in so far as it accepts corresponding obligations.

(3)

(a) Article 2 shall not apply to entry and sojourn.

(b) The following shall in particular be deemed conditions as referred to in Article 2: 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 or products inside or outside the country, as well as any other measures having similar effects. Measures taken for reasons of public security and order, public health or morality shall not be deemed conditions within the meaning of Article 2.

(4)

(a) Expropriation shall mean the taking away or restricting of any property or any property right, which is considered an investment in this Treaty, by such measures of sovereign power and to such an expropriation. The provisions of paragraph 2 of Article 3 shall also apply to the nationalization of an investment.

(b) Wherever a statute of limitation is applicable according to the laws of the Empire of Iran in conjunction with an expropriation, such statute shall not start running earlier then a document, outlining the expropriation, is handed over to the national or company concerned.

(5) 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.

(6) It is understood between the Contacting Parties that the application of Articles 4 and 6 shall affect neither the legislation of the Contracting Parties concerning taxes, levies and fiscal charges nor the assertion of any public or private obligation.

(7)

(a) In cases of subrogation, the Contacting parties shall enter into immediate consultations concerning the settlement of all questions arising from such subrogation. In important cases the utilisation by the Government of either Contracting Party of the transferred rights and titles will only be affected in agreement with the Government of the other Contracting Party. In case of failure of such consultations the matter shall be settled by a special agreement between the Contracting Parties.

(b) The recognition referred to in Article 5 shall not apply to the transfer of rights and titles which is unrelated to the guarantee granted in respect of non-commercial risks.

(8)

(a) The recognition referred to in Article 5 shall not apply to the transfer of rights and titles which is unrelated to the guarantee granted in respect of non-commercial risks.

(b) If there is any difficulty as to the calculation of the rate of exchange, the Contracting Parties shall enter into consultations with a view to finding a mutually satisfactory solution.

(9) The entitlement to the treatment more favourable mentioned in Article 7 sentence 1, shall be conditional upon the acceptance of the relevant obligations by the nations or companies claiming such more favourable treatment.

(10)

(a) Assets mentioned in Article 8, paragraph 1, letter d) shall be related to the purposes for which the investment permit has been issued.

(b) Returns from investments by the nationals of either Contracting Party shall be considered investment within the meaning of this Treaty if applied to the purposes for which the permit is issued or for which a new permit is duly obtained.

(c) Without prejudice to any other method of determining nationality, any person shall in particular be deemed to be a national of a Contracting Party who is in possession of a national passport issued by the appropriate authorities of the Contracting Party concerned.

(d) A person cannot claim rights out of this Treaty as long as such person is both German and an Iranian national

(11) In the case of Iran, the present Treaty applies only to investments made under the Law concerning the Attraction and Protection of Foreign Capital Investments in Iran, dated November 29, 1955. Which respect to investments made otherwise than in accordance with the provisions of the aforementioned Law, the interested German investor shall make an application to the agency designated by the Imperial Iranian Government requesting the enjoyment of the privileges granted by the present Treaty. The Iranian agency shall consider each application on its own merits and, if satisfied that such investment has been conducive towards the economic development of the Empire of Iran, the necessary permit may be granted enabling the requesting investor to enjoy the privileges of the present Treaty.

(12) Either Contracting Party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder seagoing vessels or airplanes of the other Contracting Party from participating in the transport of goods that are intended for investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State with funds or an enterprise in which capital within the meaning of the present Treaty is invested.

DONE at Tehran, on this day of November 11th, 2965, in six originals, two in German, two in Persian and two in English, all six texts being equally authentic. In case of divergent interpretation of the German and Persian texts, the English text shall be authoritative.

For the Federal Republic of Germany

Dr. F. J. Bach

For the Empire of Iran

Dr. Alinaghi Alikhani

PROTOCOL

On signing the Treaty concerning the Promotion and Reciprocal Protection of Investments concluded between the Federal Republic of Germany and the Empire of Iran, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Treaty:

(1) Nationals or companies of the Contracting Parties may make agreements stipulating that disputes arising out of commercial contracts in connection with investments be submitted to arbitration for decision.

(2) Such arbitration agreement must be provided for in the contract itself or be the subject of a special agreement signed by both parties, signatories of the contract. Moreover, after both parties have agreed that a dispute be submitted to an arbitral tribunal, such dispute shall no longer be within the jurisdiction of national courts.

(3) Before a case is submitted to arbitration, the parties shall try to seek conciliation within a period of two months after the date on which one party has informed the other that it intends to resort to arbitration should reconciliation fail.

(4) In the absence of any other relevant arrangement between the parties, the arbitral tribunal shall consist of three members, each party appointing one arbitrator. Should a party abstain from appointing its arbitrator, in case of an Iranian abstainee, the other party may invite the President of the Supreme Court of Iran and, in case of a German abstainee, the President of the Federal Supreme Court of Justice to make such appointment. The same procedure applies when an arbitrator is prevented from exercising his functions or in case of his resignation and the party concerned fails to appoint another arbitrator. The said arbitrators shall elect a chairman. In the event that the two arbitrators cannot agree upon the election of the person of the chairman, either of the two parties or either of the two arbitrators may invite the President of the International Chamber of Commerce in Paris to appoint the chairman; if the President has the same nationality as either of the parties or if he is unable to make such appointment, this function shall be taken over by the Vide-President; and in case the Vice-President for the reasons mentioned above is unable to make such appointment the member next in seniority shall discharge that function. The chairman may neither have the same nationality as one of the parties nor have a direct economic interest in the subject matter of the dispute. The arbitral tribunal shall determine its own procedure, unless the two parties have agreed otherwise.

(5) The costs of the arbitration shall be awarded at the entire discretion of the arbitral tribunal.

(6) The Contracting Parties shall within their respective territories admit the enforcement of arbitral awards rendered unanimously or by majority by virtue of an agreement as contemplated in Article 1 of this Protocol, irrespective of whether such an award has been rendered in the territory of either Contracting Party or in the territory of a third country. The

ordering and carrying through of the enforcement of such an arbitral award shall be governed by the laws of the country in which it is to be enforced.

(7) To ensure the enforcement mentioned in Article 6 the party applying for enforcement shall, at the time if application, supply:

(a) The original award of a duly certified copy thereof,

(b) The original arbitration agreement or a duly certified copy thereof;

(c) A translation of the award and the arbitration agreement, certified by an official or sworn translator or by a diplomatic or consular agent of one of the two Contracting Parties, if these two documents are not drawn up in the official language of the country in which the award is relied upon.

(8) The enforcement of an arbitral award may only be refused in accordance with Article V of the Convention of the United Nations of June 10, 1958, on Recognition and Enforcement of Foreign Arbitral Awards.

(9) Article 14, paragraph 3 of the Treaty shall be applied accordingly.

DONE at Tehran, on this day of November 11th, 1965, in six originals, two in German, two in Persian and two in English, all six texts being equally authentic. In case of divergence interpretation of the German and Persian texts, the English text shall be authoritative.

For the Federal Republic of Germany

Dr. F. J. Bach

For the Empire of Iran

Dr. Alinaghi Alikhani

Exchange of Letters

1 The Minister of Economy

Tehran, 11th November 1965

Excellency,

With reference to the Treaty between the Empire of Iran and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments signed today, I have the honour to make the following statement:

By 'important cases', mentioned in subparagraph a) of paragraph 7 of the Protocol, for which the agreement of the Iranian Government is suggested, is meant all cases in which the utilization of the transferred rights may involve either continuation of operation during a reasonable period of time for the purpose of liquidation, or a matter of public policy of the country where the investment is located

I should be most grateful if Your Excellency could confirm the understanding set forth above.

Accept, Excellency, the assurance of my highest consideration

(Dr. Alinaghi Alikhani)

His Excellency

Dr. Franz Josef Bach

Ambassador of the Federal Republic of Germany

Tehran

The Ambassador of the Federal Republic of Germany

Tehran, 11th November 1965

Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter dated November 11th, 1965, which reads as follows:

"With reference to the Treaty between the Empire of Iran and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments signed today, I have the honour to make the following statement:

By 'important cases', mentioned in subparagraph a) of paragraph 7 of the Protocol, for which the agreement of the Iranian Government is suggested, is meant all cases in which the utilization of the transferred rights may involve either continuation of operation during a reasonable period of time for the purpose of liquidation, or a matter of public policy of the country where the investment is located

I should be most grateful if Your Excellency could confirm the understanding set forth above".

I hereby confirm the understanding set forth in the above statement.

Accept, Excellency, the assurance of my highest consideration

(Dr. Franz Josef Bach)

His Excellency

Dr. Alinaghi Alikhani

Minister of Economy

Tehran

2 The Minister of Economy

Tehran, 11th November 1965

Excellency,

With reference to the Treaty between the Empire of Iran and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments signed today, I have the honour to make the statement as follows:

In respect of investments made in Iran in accordance with the abovementioned Treaty, Iran reserves the right to issue the permits required for authorized investments under Article 1, paragraph 1, under the condition that the investment has to be made through tralnsfer of foreign exchange through an authorized bank, or by application of the returns of such Investment, save in the case of tangible movables which may be imported in accordance with the relevant laws of Iran.

Should Your Excellency agree to the statement contained in this letter, I propose that this letter and Your Excellency's answer should be regarded as an integral part of this Treaty.

Accept, Excellency, the assurance of my highest consideration.

(Dr. Alinaghi Alikhani)

His Excellency

Dr. Franz Josef Bach

Ambassador of the Federal Republic of Germany

Tehran

The Ambassador of the Federal Republic of Germany

Tehran, 11th November 1965

Excellency,

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Investment, save in the case of tangible movables which may be imported in accordance with the relevant laws of Iran.

Should Your Excellency agree to the statement contained in this letter, I propose that this letter and Your Excellency's answer should be regarded as an integral part of this Treaty."

I have the honour to inform Your Excellency that I agree to the statement contained in your letter and to your proposal that this exchange of letters should be regarded as an integral part of the above-mentioned Treaty.

Accept, Excellency, the assurance of my highest consideration

(Dr. Franz Josef Bach)

His Excellency

Dr. Alinaghi Alikhani

Minister of Economy

Tehran

3 The Ambassador of the Federal Republic of Germany

Tehran, 11th November 1965

Excellency,

With reference to the Treaty between the Federal Republic of Germany and the Empire of Iran concerning the Promotion and Reciprocal Protection of Investments signed today, I have the honour to inform your Excellency as follows:

On the basis of the present Budget Law the Federal Republic of Germany grants guarantees covering non-commercial risks in respect of investments abroad. This presupposes, inter alia, the conclusion of an understanding concerning the treatment to be accorded to such inyestment.The Treaty between the Empire of Iran and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments signed today constitutes such an understanding from the day it has entered into force. Whenever in accordance with the provisions currently applicable in the Federal Republic of Germany the other requirements for the granting of guarantees have been complied with, the competent authorities of the Federal Republic of Germany will when granting the guarantees mentioned above take into account the legal protection provided for by the Treaty signed today.

Accept, Excellency, the assurance of my highest consideration

(Dr. Franz Josef Bach)

His Excellency

Dr. Alinaghi Alikhani

Minister of Economy

Tehran

The Minister of Economy

Tehran, 11th November 1965

Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter dated 11th Nov. 1955 which reads as follows:

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Accept, Excellency, the assurance of my highest consideralion.

(Dr. Alinaghi Alikhani)

His Excellency

Dr. Franz Josef Bach

Ambassador of the Federal Republic of Germany

Tehran

4 The Minister of Economy

Tehran, 11th November 1965

Excellency

With reference to the Treaty between the Empire of Iran and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Investments signed today, I have the honour to make the statement as follows:

In accordance with internal Iranian provisions foreign nationals and companies are not entitled to transfer their shares, profits and rights to their own or other governments. The Imperial Iranian Government assumes that apart from the arrangement made in in Article 5 of the Treaty signed today the abovementioned internal Iranian provisions are not affected by the Treaty.

I should be grateful if Your Excellency could confirm that you have taken note of the above statement.

Accept, Excellency, the assurance of my highest consideration.

(Dr. Alinaghi Alikhani)

His Excellency

Dr. Franz Josef Bach

Ambassador of the Federal Republic of Germany

Tehran

The Ambassador of the Federal Republic of Germany

Tehran, 11th November 1965

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I should be grateful if Your Excellency could confirm that you have taken note of the above statement."

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Accept, Excellency, the assurance of my highest consideralion.

(Dr. Franz Josef Bach)

His Excellency

Dr. Alinaghi Alikhani

Minister of Economy

Tehran