

# Treaty between the Federal Republic of Germany and the Argentine Republic on the Promotion and Reciprocal Protection of Investments

The Federal Republic of Germany and the Argentine Republic -

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

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. the term "investment" covers, in particular but not exclusively, all types of assets, in accordance with the legislation of the Contracting Party in whose territory the investment is made in accordance with this Treaty

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Shares, share rights in companies and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, such as, in particular, copyrights, patents, utility models, industrial designs, trademarks, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Public-law concessions, including concession and concession concessions;

2. The term "income" means the amounts accruing to an investment, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

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

b) With regard to the Argentine Republic:

Argentinean as defined by Argentine legislation;

4. The term "companies" means legal persons as well as commercial companies or other companies or groups with or without legal personality who are established in the territory of one of the contracting parties, whether or not their activity is directed at profit.

## Article 2.

(1) Each Contracting Party shall promote the investment of nationals or companies 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) Investments by nationals or companies of a Contracting Party which have been carried out in the territory of the other Contracting Party in accordance with its legislation enjoy the full protection of this contract.

(3) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

### **Article 3.**

(1) Each Contracting Party shall, in its territory, treat capital investments of nationals or companies of the other Contracting Parties or investments in which nationals or companies of the other Contracting Parties are involved not less favorably than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to prerogatives granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade zone.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

### **Article 4.**

(1) Investments by nationals or companies of a Contracting Party shall enjoy full legal protection and full legal certainty in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. 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 without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. 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) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

### **Article 5.**

(1) Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer, the payments made 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) Repayment of the loans referred to in Article 1 (1) (c);

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.

(2) The transfer shall be effected without delay in accordance with the procedures applicable in the territory of the respective Contracting Parties and at the applicable rate. This rate may not differ materially from the cross-rate that results from the exchange rates that the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights and claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. The other Contracting Party also recognizes the entry of the former Contracting Party into these rights and claims of the legal predecessor according to reason and amount. Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred rights and rights.

## **Article 7.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

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

## **Article 8.**

This Agreement shall also apply to matters arising after the entry into force of this Agreement with respect to investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party pursuant to its legislation before the entry into force of this Treaty.

## **Article 9.**

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

(2) If a disagreement 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 appoint the chairman within three months after the one party to the agreement has notified the other that they intend to submit the disputes to an arbitration tribunal.

(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 binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of this Convention shall not apply to the arbitration referred to above Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of non-compliance with a decision of the arbitral tribunal of the said Convention (Article 27) shall remain unaffected.

## **Article 10.**

(1) Differences of opinion regarding investment within the meaning of this Treaty between one of the Contracting Parties

and a national or a company of the other Contracting Parties shall be settled amicably as far as possible between the parties concerned.

(2) If a disagreement within the meaning of paragraph 1 can not be settled within six months from the date of its assertion by one of the two parties, it shall, at the request of one of the two parties, be submitted to the competent courts of the Contracting Party in whose territory the investment was made, submit to.

(3) Under any of the following conditions, the differences of opinion may be submitted to an international arbitration court:

a) At the request of a party to the dispute, if, within 18 months from the commencement of the judicial proceedings pursuant to paragraph 2, a court decision has not been taken or if such a decision exists, the differences of opinion between the parties to the dispute continue;

b) If both parties agree.

(4) Unless the controversy has agreed otherwise, differences of opinion between the parties in the cases referred to in paragraph 3 of this article will be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States or an ad hoc arbitration tribunal According to UNCITRAL arbitration.

If no agreement is reached within three months after a dispute has been requested by a dispute, the dispute shall be subject to an arbitration procedure, provided that both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the settlement of disputes between States and nationals of other States Framework of the abovementioned Convention. Otherwise the disagreement is subject to the aforementioned ad hoc arbitration.

(5) The arbitral tribunal shall make its decisions on the basis of this Treaty and, where appropriate, other agreements between the Contracting Parties, the national law of the Contracting Party in whose territory the investment is situated, including the rules of private international law, and the general legal principles of international law.

(6) The arbitration shall be binding and shall be enforced in accordance with national law.

## **Article 11.**

The provisions of this Treaty shall continue to apply without restriction in the cases referred to in Article 63 of the Vienna Convention of 23 May 1969 on the law of the Treaties.

## **Article 12.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Buenos Aires.

(2) This Agreement shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract 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 Treaty, Articles 1 to 11 shall continue to apply for a period of fifteen years from the date of expiry of the Treaty.

Done at Bonn on 9 April 1991 in two originals, in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

Genscher

For the Argentine Republic

Guido di Tella

## **Protocol**

In the act of signing the Treaty between the Argentine Republic and the Federal Republic of Germany on the promotion and reciprocal protection of investments, the undersigned plenipotentiaries have adopted the following provisions, which are considered to be an integral part of the Treaty:

### **(1). Ad Article 1**

(a) With regard to Article 1(1), this Treaty shall not apply to investments made in the Argentine Republic by natural persons who are nationals of the other Contracting Party if such persons, at the date of the original investment, have been domiciled in the Argentine Republic for more than two years, unless it is proved that the investments come from abroad.

b) Profits derived from investments and, in the event that they are reversed, profits derived from these investments, shall enjoy the same protection as the original investment.

c) "Other types of participations", according to paragraph 1 letter b) of Article 1, shall mean in particular those capital investments which do not grant their holder any voting or control rights.

(d) The rights to funds referred to in Article 1(1)(c) comprise lending rights related to a participation and having the nature and amount of a participation (quasi-public loans). However, they do not include claims by third parties, e.g. bank loans on commercial terms.

(e) Without prejudice to other procedures for determining nationality, a person shall in particular be regarded as a national of a Contracting Party if he holds a national passport issued by the competent authorities of the respective Contracting Party. This Treaty shall not apply to investors who are nationals of both Contracting Parties.

(f) In determining whether the concept of "companies" under Article 1 (4) applies, regard shall be had to their seat, which shall be understood to mean the place where the company has its principal administration.

g) The Treaty shall also apply to those areas of the Exclusive Economic Zone and the Continental Shelf over which international law grants to the Contracting Party concerned rights of sovereignty or jurisdiction.

### **(2). Ad Article 3**

(a) "Activities" within the meaning of Article 3, paragraph 2, shall include in particular, but not exclusively, the management, use, and enjoyment of an investment. In particular, but not exclusively, less favourable treatment within the meaning of Article 3 shall include less favourable measures affecting the acquisition of raw materials and other inputs, energy and fuel, as well as means of production and exploitation of all kinds or the sale of products within the country and abroad. Measures taken for reasons of internal or external security and public order, public health or morality shall not be considered as "less favourable treatment" within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend tax advantages, exemptions and reductions which, under its tax laws, are granted only to natural persons and companies resident in its territory, to natural persons and companies residents in the territory of the Contracting Party concerned.

c) The Contracting Parties shall, in accordance with their internal legal provisions, accord sympathetic consideration to applications for immigration and residence from persons of one of the Contracting Parties who, in connection with an investment, wish to enter the territory of the other Contracting Party; the same attitude shall be observed with regard to employees of a Contracting Party who, in connection with an investment, wish to enter and reside in the territory of the other Contracting Party to exercise their activity as employees. Applications for work permits shall also be processed on a voluntary basis.

### **(3). Ad Article 4**

The right to compensation shall also exist in the event that one of the measures defined in Article 4 is taken in respect of the enterprise in which the investment is situated and severe damage to the investment occurs as a result.

### **(4). Ad Article 5**

A transfer is deemed to have been effected "without delay" within the meaning of Article 5(2) when it has been made within the time normally necessary for the completion of the transfer formalities. The time limit, which may not in any case exceed two months, shall begin to run at the time of the submission of the corresponding formally completed application.

## **(5). Ad Article 8**

In no case shall this Treaty apply to claims or disputes arising prior to its entry into force.

## **(6).**

With regard to the transport of goods and persons in connection with investments, neither Contracting Party shall exclude or hinder transport undertakings of the other Contracting Party and, if necessary, grant authorizations for the performance of transport subject to the rules of international agreements in force between the Contracting Parties.

Done at Bonn on 9 April 1991 in two copies, in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

Genscher

For the Argentine Republic

Guido di Tella

## **Exchange of Letters**

Embassy of the Republic of Argentina

Mr. Minister:

On the occasion of the signing of the Treaty on the Promotion and Protection of Reciprocal Investments on 9 April 1991, the Government of the Argentine Republic has the honour to inform the Government of the Federal Republic of Germany of the following:

On the basis of the Treaty of Friendship and Cooperation of 1988 or the Treaty for the Establishment of a Special Partnership Relationship of 1987 respectively, the Kingdom of Spain and the Italian Republic grant the Argentine Republic concessional credit lines with the aim of financing investments for the implementation of investments, especially for the creation of joint ventures in the small and medium sized enterprise sector.

Financing requests for each project must be authorized in accordance with special Argentinean regulations and subsequently agreed upon with the Spanish or Italian counterpart, as the case may be.

In return, the Argentine Republic has committed itself to:

- grant tariff and tax exemption for imports of goods intended for investment financed by the concessionary credits provided for in the respective treaties.

- not to adopt any measures which would prevent the repatriation of the invested capital or the free transfer of profits from risk investments for those projects which have been financed according to the provisions of the above-mentioned Treaties.

These special conditions are granted with the aim of enabling new investments for the economic development of Argentina in areas whose promotion is particularly necessary.

The Contracting Parties interpret Article 3 of the Treaty on the Promotion and Reciprocal Protection of Investments in such a way that the most-favoured-nation clause does not refer to the special conditions and privileges which the Argentine Republic grants to foreign investors for the above-mentioned projects.

The Argentine Republic will ensure that German investors and their investments, which are not subject to the special conditions mentioned above, will not be substantially affected in their competitive capacity.

Please accept, Mr. Minister, the assurances of my highest and most distinguished consideration.

Guido di Tella

Minister for Foreign Affairs and Worship

Bonn, 9 April 1991

Mr Minister for Foreign Affairs  
of the Federal Republic of Germany  
Hans D. Genscher  
Bonn

Minister for Foreign Affairs and Worship

Mr. Minister:

I have the honour to acknowledge receipt of the following letter from the Government of the Federal Republic of Germany, dated 9 April 1991

"On the occasion of the Treaty on the reciprocal promotion and protection of investments signed between our two countries on 9 April 1991, I have the honour to inform you of the following:

As from the entry into force of the said Treaty and taking into account the principle established in its Article 5 on the free transfer of capital and profits, the German authorities have the possibility, after the submission by interested investors of an application to guarantee an investment in Argentina, to grant full coverage of such investments in accordance with the directives and general conditions in force. Therefore, as from the entry into force of this Treaty, these authorities may, in addition to those currently available, grant guarantees in respect of the amounts obtained from an investment during a given period, such as profit shares, dividends and interest.

Allow me, Mr. Minister, to convey to you the assurances of my highest consideration".

I renew to you, Mr. Minister, the assurances of my highest consideration.

Bonn, 9 April 1991

Mr Minister for Foreign Affairs  
of the Federal Republic of Germany  
Hans D. Genscher  
Bonn