

Treaty between the Federal Republic of Germany and the Republic of Liberia for the promotion and reciprocal protection of investments

THE FEDERAL REPUBLIC OF GERMANY and THE REPUBLIC OF LIBERIA

DESIRING to intensify economic cooperation between the two 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 the two States

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each contracting State, hereinafter referred to in the present Treaty as "contracting party", shall in its territory admit the investment, in accordance with its legislation, rules and regulations existing or hereafter to be enacted and promulgated, of capital by nationals or companies of the other contracting party, promote such investments as far as possible, and give sympathetic consideration to the issuance of any relevant permits required.

(2) Investments owned by, or under the influence of, nationals or companies of either contracting party 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 of the law in the territory of the other contracting party.

(2) 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 just compensation. Such compensation shall represent a fair value of the investment affected; it shall be actually realizable, freely transferable and shall be made without undue delay. Adequate provision shall have been made at or prior to the time of the deprivation for the determination and the giving of such compensation. The legality of any such deprivation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either contracting party who owing to hostilities in the territory of the other contracting party suffer the loss of investments situate there, shall be accorded the same treatment by such other contracting party as 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 the same treatment as is accorded to comparable requests made by nationals or companies of any third State.

(4) The provisions 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 a claim arising out of a guarantee given for an investment is asserted against a contracting party, the latter shall, without prejudice to its rights under Article 11, be authorized on the conditions stipulated by its predecessor in title to exercise the rights having been assigned to such party by law or having been ceded to it by the predecessor in title (devolved interest). As regards the transfer of payments to be made by virtue of the devolved interest to the contracting party concerned, paragraphs 2, 4 and 5 of Article 3 as well as Article 4 shall apply mutatis mutandis.

Article 6.

(1) To the extent that those concerned have not made other arrangements 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 undue delay and at the rate of exchange effective for current transactions on the day the transfer is made. Article 5 shall be made without undue 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 as are 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 chattel real, mortgages, liens, pledges, usufructs and similar rights;
- b) Shares or other kinds of interest in companies;
- c) Titles to money or to any performance having an economic value;
- d) Copyrights, industrial property rights; technical processes, trade-names, and good will;
- e) Concessions under public law.

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 as profit or interest for a specific period.

(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 Republic of Liberia:

Liberians within the meaning of the laws of the Republic of Liberia.

(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 Republic of Liberia:

As specified by the corporation laws of the Republic of Liberia.

(5) The term "permit" shall mean the granting of a right to carry on business.

Article 9.

The present Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either contracting party in the territory of the other contracting party in accordance with the latter's legislation. This provision shall not affect the Agreement of 27 February 1953 on German External Debts.

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 concerning the interpretation or application of the present Treaty 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, in each individual case, be constituted as follows: Each contracting party shall appoint one member, and these two members, so appointed, 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 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 cost of its own member and of its counsel in the arbitral proceedings; the cost of the chairman and the remaining cost shall be borne in equal parts by both contracting parties. The arbitral tribunal may make a different regulation concerning cost. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 12.

In the event of a conflict arising between the contracting parties, for the period of said conflict, investments made under the present Treaty shall be governed by international law. Any measures permissible under such law 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 reestablished.

Article 13.

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 Government of the Republic of Liberia 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 date of exchange of the instruments of ratification. It shall remain in force for a period of ten years 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 shall continue in force thereafter for an unlimited period and 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 the termination of the present Treaty, the provisions of Article 1 to 13 shall continue to be effective for a period of twenty years commencing from the date the particular investment has been effected or, if a guarantee within the meaning of Article 5 has been granted for the period of such guarantee. Article 1 to 13 shall continue to be effective for a period of twenty years commencing from the date the particular investment has been effected or, if a guarantee within the meaning of Article 5 has been granted for the period of such guarantee.

DONE at Monrovia on December 12, 1961 in four originals, two in the German and two in the English languages, each text being equally authentic,

For the Federal Republic of Germany:

Alfred Ries

Dr. Hermann Reinhardt

For the Republic of Liberia:

Charles D. Sherman

PROTOCOL

On the signing of the Treaty for the promotion and reciprocal protection of investments concluded between the Federal Republic of Germany and the Republic of Liberia the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as integral parts of the said Treaty:

(1) The contracting parties will continue negotiations concerning the conclusion of an establishment treaty which should, inter alia, make provision for the following matters:

Immigration and emigration, temporary and permanent residence, protection from expulsion, the taking up and carrying on of business and professional activities, the foundation of, and participation in, enterprises, labour permits for managerial and technical staff, protection and security of persons and property, free access to courts, freedom to contract, acquisition of real estate through lease and other property, admission as arbitrator.

(2) Ad Article 1

(a) Each contracting party is free to decide whether it will issue a permit required.

(b) Except as herein otherwise provided, in the event of a conflict between the provisions of the present Treaty and of national legislation, the former shall prevail. This stipulation shall maintain, unless another arrangement can be effected

between the contracting parties hereto, or nationals and companies thereof, desiring the issuance of permits under the terms and conditions of the present Treaty.

(c) An investment within the meaning of paragraph 2 of Article 1 shall also comprise investments effected by companies which are established under the laws of a third country and of which nationals or companies of either contracting party hold the majority of the capital invested in said companies.

(3) Ad Article 2

(a) 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 of 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.

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

(4) Ad Article 3

(a) The provisions of paragraph 2 of Article 3 shall also apply to the transfer of an investment to public ownership, to the subjection of an investment to public control, and to similar interventions by public authorities. Expropriation shall mean the taking away of any property or any property right, which in itself or in conjunction with other rights constitutes an investment, or curtailing the management, use or enjoyment of such property or property right by such measures of sovereign power and to such an extent as are tantamount to expropriation.

(b) "Just compensation" as referred to in paragraph 2 of Article 3 shall mean, in general, compensation equivalent to the investment at the time of the deprivation, unless another arrangement has been agreed with the investor and laid down in the permit.

(c) Hostilities within the meaning of paragraph 3 of Article 3 shall comprise any type of armed conflict or internal disorder.

(5) 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.

(6) Ad Article 6

A transfer shall be deemed to have been made "without undue delay" within the meaning of paragraph 1 of Article 6 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.

(7) Ad Article 8

It is expressly understood between the contracting parties that in the territory of the Republic of Liberia aliens are excluded under the constitution of the Republic of Liberia from fee simple ownership of land. Consequently, in the case of the Republic of Liberia immovable property within the meaning of sub-paragraph a of paragraph 1 of Article 8 shall be restricted to chattels real.

(8) Ad Article 11

It is understood that if a contracting party requests the decision of the arbitral tribunal in the interest of its nationals or companies the "remaining cost" within the meaning of paragraph 5 or Article 11 shall be borne by that contracting party whose interpretation or application of the present Treaty will have been found to be inconsistent with the provisions of the present Treaty.

(9) Either contracting party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder sea-going vessels 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 of an enterprise in which capital within the meaning of the present Treaty is invested.

Either contracting party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder aircraft of the other contracting party from participating in the transport of passengers, baggage and cargo, if performed in connection with an investment within the meaning of the present Treaty. This also applies to transport operations performed in the territory of either contracting party or between that and a third country on behalf of an

enterprise in which capital within the meaning of the present Treaty is invested. Article 13 shall not apply to the provisions of this paragraph regarding transport by aircraft.

Payments for transport operations shall be transferable in accordance with Article 6 of the present Treaty.

(10 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.

DONE at Monrovia on December 12, 1961 in four originals, two in the German and two in the English languages, each text being equally authentic,

For the Federal Republic of Germany:

Alfred Ries

Dr. Hermann Reinhardt

For the Republic of Liberia:

Charles D. Sherman

Exchange of Notes

The Chairman of the German Delegation

Monrovia, December 12, 1961

Mr. Chairman,

I have the honour to refer to the Treaty between the Federal Republic of Germany and the Republic of Liberia for the promotion and reciprocal protection of investments and to confirm the following additional understanding reached during our negotiations:

"Intending to facilitate and promote the making and development of investments by German nationals or companies in the Republic of Liberia, the Government of the Republic of Liberia will, prior to the entry into force of an establishment treaty the negotiation of which has been provided for, issue the permits, if required, to German nationals who in connection with investments by German nationals or companies, desire to enter and stay in the Republic of Liberia and to carry on an activity there as an employee in an administrative, supervisory or technical position, except in so far as reasons of public order, security, public health or morality warrant otherwise."

I shall be grateful if you would kindly confirm the above understanding.

Accept, Mr. Chairman, the assurance of my highest consideration.

Dr. Hermann Reinhardt

The Chairman of the Liberian Delegation

His Excellency Charles D. Sherman

Secretary of the Treasury

Monrovia

Republic of Liberia

Treasury Department

Monrovia

Office of the Secretary

Monrovia, December 12, 1961

Mr. Chairman,

I have the honour to acknowledge receipt of your letter dated December 12, 1961, which read as follows:

"I have the honour to refer to the Treaty between the Federal Republic of Germany and the Republic of Liberia for the promotion and reciprocal protection of investments and to confirm the following additional understanding reached during our negotiations:

"Intending to facilitate and promote the making and development of investments by German nationals or companies in the Republic of Liberia, the Government of the Republic of Liberia will, prior to the entry into force of an establishment treaty the negotiation of which has been provided for, issue the permits, if required, to German nationals who in connection with investments by German nationals or companies, desire to enter and stay in the Republic of Liberia and to carry on an activity there as an employee in an administrative, supervisory or technical position, except in so far as reasons of public order, security, public health or morality warrant otherwise."

"I shall be grateful if you would kindly confirm the above understanding".

I have the honour to confirm the understanding contained in your letter.

Accept, Mr. Chairman, the assurance of my high consideration.

Charles Dunbar Sherman

Secretary of the Treasury, R.L.

The Chairman of the German Delegation

Ministerial Director

Dr. Hermann Reinhardt

Monrovia