

# GERMANY-INDIA INVESTMENT GUARANTY AGREEMENT

No. T-27/59-III.

Ambassador of India

Bonn

October 15, 1964.

Excellency, I have the honour to refer to the recent discussions which took place between the Representatives of the Government of India and the Representatives of the Government of the Federal Republic of Germany in order to exchange ideas on the need to encourage German private investments in India.

Considering that

the Government of India welcome private foreign investment particularly in industry in accordance with the priorities established in their Plans, and have been following a policy intended to encourage such investment;

it has been the policy of the Government of India freely to allow transfer of profits, interest, dividends, royalties, and of repayment of loans after payment of taxes as well as repatriation of the proceeds of liquidation;

the Government of the Federal Republic of Germany are actively promoting German private investments abroad by offering loans and tax concessions to intending German investors, and by issuing Federal guarantees;

in all matters relating to such investments the Government of the Federal Republic of Germany intend in similar circumstances, to give investments in India a treatment no less favourable than that accorded to investments in any other country; an understanding has been reached as a result of these discussions, which may be summed up as follows:

1. The Government of India welcome the steps taken by the Government of the Federal Republic of Germany and agree that the following provisions shall apply to German assets, including those from Land Berlin, in India provided the investment of such assets has been approved on or after the 15th October, 1964, in accordance with the Indian laws referred to in paragraph 2, and the rules and regulations framed thereunder (hereinafter referred to as "investments") :

a) German investors shall in matters related to their investments not be subject to treatment less favourable than that accorded to national or other foreign investors in similar circumstances.

b) German investors shall be permitted after payment of taxes to transfer to the Federal Republic of Germany profits, interest, dividends and royalties derived from their investments as well as repayments of loans.

c) In the event of total or partial liquidation of a German investment in India, the proceeds of such liquidation may be transferred without undue delay in such manner as may have been laid down in the document of approval or consent before the investment was made.

d) The Government of India do not intend, as a rule, to nationalize or expropriate approved foreign investments. Any decision to nationalize or expropriate a German investment or part of it taken by the Government of India shall be based on practical considerations and be taken in the national interest. In the event of a German investor being directly or indirectly deprived of his investment by nationalisation or expropriation, the Government of India shall pay fair and equitable compensation and shall permit its effective transfer without undue delay.

e) The rate of exchange for transfers under the foregoing sub-paragraphs shall be the rate for current transactions within the meaning of the provisions of the International Monetary Fund.

f) the Government of India will grant in accordance, with their general policy the necessary permits to German nationals whose training or experience is specially required by an investment and who desire to enter and stay in India to carry on

activities related to such investment except in so far as reasons of public order, security, public health or morality warrant otherwise.

2. An investment is considered approved within the meaning of paragraph 1 when the necessary authorisations have been issued. The laws governing such authorisations are at present the Capital Issues Control Act, the Foreign Exchange Regulations Act, the Industries (Development and Regulation) Act and the Indian Companies Act. If and when other or further authorisations become necessary on the ground of changes in the relevant Indian legislation, such new requirements shall be communicated to the Government of "the Federal Republic of Germany by the Government of India, In respect of investment made after the date of such communication, the authorisations mentioned therein shall be considered as necessary authorisation m thin the meaning of the first sentence of this paragraph.

3. If the Federal Republic of Germany has given a guarantee for an investment, and if any right or title of the investor has by virtue of law or legal transaction been transferred to the Federal Republic of Germany in accordance with the guarantee arrangements, the Government of India will recognize the transfer of any right or title of such investor to the Federal Republic of Germany and the subrogation, by virtue of law or legal transaction, of the Federal Republic of Germany to any such right or title.

4. a) In the event of disputes concerning the interpretation or application of this note the Government of India, and the Government of the Federal Republic of Germany shall enter into consultations with a view to settling the disputes to mutual satisfaction.

b) If the two Governments do not succeed in settling such a dispute by agreement within a reasonable period of time, it may be referred by either Government for final and binding determination to an arbitral tribunal, provided the dispute refers to a matter or question in respect of which the Federal Republic of Germany has or had assumed a guarantee.

c) The arbitral tribunal shall comprise three arbitrators, one arbitrator to be named by each Government and the third to be agreed upon by the two arbitrators so chosen, provided such third arbitrator shall not be a national of either country. Each Government shall designate an arbitrator within two months of the date of delivery by either Government to the other Government of a diplomatic request for arbitration of dispute. The third arbitrator shall be agreed upon within two months. If any of the arbitrators is not designated or agreed upon within the time limits indicated, either Government may request the President of the International Court of Justice to make the necessary appointment or appointments by choosing the arbitrator or arbitrators. The arbitrator o shall base their award on Article 38 of the Statute of the International Court of Justice.

5. The foregoing provisions shall also apply to German investments made or approved between January 1, 1960 and October 15, 1964 in respect of which the Government of the Federal Republic of Germany have issued or will issue a guarantee to cover non-commercial risks.

6. a) The Government of India reserve the right to revoke or modify this note after a period of notice of six months. In such event, however, the provisions of paragraphs 1 to 5 of this note shall continue to apply to investments made during the period of validity of this note for a period of five years after its expiry or fifteen years after the date of any such investment, whichever is longer.

b) The Government of India have taken note that the Government of the Federal Republic of Germany regard this understanding as provisional and may make proposals for its amendment, particularly in the event of the conclusion of a multilateral convention on protection of investments or of a bilateral. agreement.

7. I should be grateful if you would please acknowledge receipt of this note and confirm that its contents correctly set out the understanding reached between our two Governments. Accept, Excellency, the assurance of my highest consideration.

Signed

P. Achuta Menon  
Ambassador of India

His Excellency Mr. Rolf Lahr

State Secretary

Foreign Office,

BONN

