

# **Agreement between the Government of the Federal Republic of Germany and the Government of Macedonia on the Promotion and Reciprocal Protection of Capital Investment**

The Government of the Federal Republic of Germany and the Macedonian Government -

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

In the endeavor to create favorable conditions for investments by investors 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. Definitions**

1. The term "investments" includes assets of any kind, in particular:

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights and other types of participations in companies;
- c) Claims on money or other services connected with an investment;
- 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.

A change in the form in which assets are invested does not affect their property as an investment. The concept of "investment" does not include exposures arising from trading transactions involving the purchase of goods or services or loans, other than loans which, by their nature and extent, have the character of a shareholding (loans similar to equity).

2. The term "income" includes the amounts accruing to an investment, in particular profit shares, interest, dividends, royalties or other charges.

3. The term "investor" includes "nationals" and "companies" of both contracting parties as follows:

a) "Nationals"

I. ) With regard to German nationals:

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

II. ) With regard to Macedonian nationals:

Nationals of the Macedonian Republic;

b) "Companies" with respect to both Contracting Parties:

Any legal person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the respective Contracting Party, whether or not its activity is directed at profit.

Without prejudice to other procedures for the determination of nationality, in particular as a national of a Contracting Party, any person possessing a national passport issued by the competent authorities of the Contracting Party concerned shall,

4. The term "territory" covers

a) With regard to German territory:

The German territory as well as the territories of the exclusive economic zone and the mainland base, insofar as international law permits the exercise of sovereign rights or sovereign powers in these territories,

b) With regard to Macedonian territory:

The Macedonian territory on land, water and in the air in which the Macedonian government exercises sovereign rights and sovereign powers in accordance with international law.

## **Article 2. Promotion and Approval of Investments**

(1) Each Contracting Party shall, as far as possible, promote the investments of investors 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) A Contracting Party shall in no way interfere with the administration, use, use or use of the investments of investors of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

(3) Investments made in their territory by investors of the other Contracting Parties in accordance with the laws of a Contracting Party shall enjoy full protection of the Agreement. The same applies to income from the investment and, in the event of its reinvestment, its income.

(4) In the case of carriage of goods and persons in connection with an investment, a Contracting Party shall neither eliminate or hinder the transport companies of the other Contracting Parties and, if necessary, issue authorizations for carrying out the transports.

## **Article 3. Treatment of Investments and Investors**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of the investors of the other Contracting Parties not less favorably than the investments of its own investors or investments by investors of third States. The same applies to the actuation of investors in connection with an investment.

(2) The treatment referred to in paragraph 1 shall not apply to prerogatives granted by a Contracting Party to third-country investors on the basis of their membership in a customs or economic union, a common market or a free-trade zone or because of their association with it. The same applies to benefits arising from existing or future double taxation agreements or other agreements on tax questions.

(3) For the purposes of paragraph 1, the "management", in particular, but not exclusively, of the management, use, use and use of an investment is to be considered. A "less favorable" treatment within the meaning of paragraph 1 is to be considered in particular: the different treatment in the case of restrictions on the purchase of raw materials and auxiliary materials, energy and fuels as well as production and operating means of all kinds, different treatment in the case of disabilities The sale of domestic and foreign products and other measures with a similar effect. Measures to be taken for reasons of public security and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of paragraph 1.

(4) The provisions of this article do not require a contracting party to extend tax advantages, exemptions and reductions granted to natural persons and companies established in its territory under the tax laws to natural persons and companies established in the territory of the other Contracting Party.

(5) The Contracting Parties shall, in accordance with their domestic legislation, examine the applications for the entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; The same shall apply to employees of the one Contracting Party who enter the territory of the other Contracting Party in connection with an investment and who wish to reside there in order to pursue an activity as an employee. Applications for work permits are also being examined carefully.

## **Article 4. Property Protection**

(1) Each Contracting Party shall, in its territory, provide full protection and full security for investments made by investors of the other Contracting Parties in accordance with its laws.

(2) Investments by investors of a Contracting Party may be expropriated, nationalized or subject to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting Parties only for the general good and for compensation. The compensation must be equal to the market 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 forthwith and payable until the date of payment at the usual bank interest rate which may not be lower than the LIBOR rate. It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. 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) A right to compensation exists even if, by means of governmental measures, the company is the subject of the investment, and its economic substance is thereby considerably impaired.

(4) Investors in a Contracting Party who suffer losses from investments in the territory of the other Contracting Party through war or other armed conflicts shall be treated no less favorably by the Contracting Party with regard to reimbursements, indemnities, compensation or other consideration than their own investors. Such payments must be freely transferable.

(5) In respect of the matters governed by this Article, the investors of a Contracting Party shall enjoy most-favored-nation treatment in the territory of the other Contracting Party.

## **Article 5. Transfer**

Each Contracting Party guarantees to the investors of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of the income referred to in Article 1 (2);
- c) Repayment of loans granted in respect of investments;
- d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;
- e) The compensation provided for in Article 4;
- f) Income from an activity in connection with an investment.

## **Article 6. Subrogation**

If a Contracting Party or a third party commissioned by the Contracting Party makes payments to its investors on the basis of a guarantee for an investment in the territory of the other Contracting Party, this other Contracting Party shall recognize the transfer of all rights, claims and obligations of such investors without prejudice to the rights of the former Contracting Party. By virtue of law or by virtue of a legal transaction, to the former Contracting Party or to the third parties appointed by it. In addition, the other Contracting Party shall recognize the entry of the former Contracting Party or the third party appointed by it into all such rights, claims (transferred claims) and obligations which the former Contracting Party or the third parties commissioned by it may be entitled to exercise to the same extent as its predecessor. Article 4 (2) to (4) and Article 5 shall apply mutatis mutandis to the transfer of payments on the basis of the transferred claims.

## **Article 7. Carry Out the Transfer**

(1) Transfers pursuant to Article 4 (2) to (4), Article 5 or 6 shall be effected immediately in convertible currency at the applicable rate.

(2) This exchange rate is not intended to 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 currency concerned into special drawing rights.

(3) A "transfer" within a time limit which is normally required to comply with the transfer formalities shall be deemed to be carried out "immediately" within the meaning of paragraph 1. The deadline begins with the submission of a corresponding application and may under no circumstances exceed two months.

## **Article 8. More Favorable Law**

(1) If the legislation of a Contracting Party or obligations under international law existing between the Contracting Parties or which are justified in the future constitute a general or special rule which grants more favorable treatment to the investments of investors of the other Contracting Parties than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

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

## **Article 9. Application of the Agreement**

This Agreement shall also apply to investments made by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory before the entry into force of this Agreement. This does not apply to differences of opinion which have arisen before the entry into force of this Agreement.

## **Article 10. Disagreements between the Contracting Parties**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement 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 the two members as chairman of a third State with which the two Contracting Parties maintain diplomatic relations, 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 it wishes to submit the dispute 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. The arbitral tribunal may adopt a different cost regime. 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 settlement of disputes between States and nationals of other States, the arbitration referred to in Article 27 (1) of the Convention may not be appealed to in the event of a dispute between the parties The investor of a Contracting Party and the other Contracting Party has concluded an agreement in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitral tribunal of the said Convention (Article 27), or in the case of the law on the transfer of power or the legal transaction referred to in Article 6 of this Agreement shall remain unaffected.

## **Article 11. Disagreements between a Contracting Party and Investors of the other Contracting Parties**

(1) Disputes concerning investments between one of the Contracting Parties and an investor of the other Contracting Parties shall, as far as possible, be settled amicably between the parties concerned.

(2) If the disagreement can not be settled within a period of six months from the date of their assertion by one of the two parties, it shall be submitted to arbitration at the request of the investor of the other Contracting Parties. Unless the parties to the dispute reach a dissenting agreement, the dissension shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any other means of appeal or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party participating in the dispute shall not assert an objection during an arbitration proceedings or the execution of an arbitration award that the investor of the other Contracting Party has received compensation for part of the damage or the total damage resulting from an insurance.

## **Article 12. Completion of the Agreement**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13. Duration and Termination of the Agreement**

(1) This Agreement shall enter into force one month after the date on which both Governments have notified each other that the domestic requirements for entry into force have been fulfilled. The date of receipt of the last notification shall be decisive. The Agreement shall remain in force for ten years; After the expiry of which period, the period of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the Agreement in writing with a period of twelve months before the expiry of the Agreement. After ten years, the Agreement may be terminated at any time by a period of twelve months.

(2) For investments made up to the date of the expiry of this Agreement, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Agreement.

(3) Upon the entry into force of this Agreement, the Contracting Parties to the Treaty of mutual protection and the promotion of investments, signed by the Federal Republic of Germany and the Socialist Federal Republic of Yugoslavia on 10 July 1989, shall cease to have effect.

Done at Ohrid, this 10th day of September 1996, in two originals, each in the Czech and Macedonian languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany

Dr. Klaus Schrameyer

For the Macedonian Government

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