

Agreement between the Federal Republic of Germany and the People's Republic of Bangladesh concerning the Promotion and Reciprocal Protection of Investments

The Federal Republic of Germany and the People's Republic of Bangladesh,

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 promotion and reciprocal protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

Article 1.

Each Contracting Party shall in its territory promote as far as possible the investment of capital by nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

Article 2.

(1) Neither Contracting Party shall subject investments in its territory owned or controlled by nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

Article 3.

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

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and subject to compensation, provision for the determination and payment of which shall have to be made in an appropriate manner at or prior to the time of such expropriation. Such compensation shall be equivalent to the investment expropriated; it shall be paid without delay, be actually realizable and shall be freely transferable. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment not 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. Such payments shall be freely transferable.

(4) Nationals or 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 this Article.

Article 4.

Either Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of the capital, of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party as well as the subrogation of that Contracting Party to any such right or claim, which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, paragraphs 2 and 3 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

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

(2) This rate of exchange shall be in accordance with the pertinent regulations of the International Monetary Fund. In cases of doubt the rate of exchange shall be based on those rates which would be applied by the International Monetary Fund on the date of payment for conversions of Special Drawing Rights into the currencies of the countries concerned.

(3) If the provisions pursuant to paragraph 2 above are not applicable to either Contracting Party, the official rate fixed by that Contracting Party for its currency in relation to a freely convertible currency shall be applied. If no such rate has been fixed, a fair and equitable rate of exchange shall be admitted.

Article 7.

(1) 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 Agreement contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by agreement with nationals or companies of the other Contracting Party.

Article 8.

For the purpose of the present Agreement

(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, liens and pledges, usufructs and similar rights;

(b) Shares of companies and other kinds of interest;

(c) Claims to money or to any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

(e) Business concessions under public law, including concessions to search for, extract or exploit natural resources.

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 for a definite period as profit or interest.

(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 People's Republic of Bangladesh:

Bangladeshis within the meaning of the citizenship laws of Bangladesh.

(4) The term "companies" shall mean

(a) In respect of the Federal Republic of Germany:

Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the German area of application of the present Agreement 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 People's Republic of Bangladesh:

Any partnership constituted under the Partnership Act, 1932, and any company formed and registered under the Companies Act, 1913, either private or public, irrespective of whether the liability of its members is limited by shares or by guarantee or is unlimited, having its seat in the territory of the People's Republic of Bangladesh and lawfully existing consistent with legal provisions and whether or not its activities are directed at profit.

Article 9.

The present Agreement shall apply to all 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 shall apply in respect of German investments in the People's Republic of Bangladesh made on or after 16 December 1971. German investments made in the territory of Bangladesh before 16 December 1971 shall be the subject of an exchange of letters between the Contracting Parties.

Article 10.

(1) Disputes concerning the interpretation or application of the present Agreement 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 an arbitral tribunal shall be constituted for each individual case in the following way: each Contracting Party shall appoint one member, and these two members 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 of 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 Court 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 costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11.

The provisions of the present Agreement 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 on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 12.

With the exception of the provisions in paragraph 7 of the Protocol, referring to air transport, the present Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the People's Republic of Bangladesh within three months of the date of entry into force of the present Agreement.

Article 13.

- (1) The present Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Dacca.
- (2) The present Agreement shall enter into force one month from the date of the exchange of the instruments of ratification. It shall remain in force for a period of ten years. Thereafter, it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.
- (3) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of twenty years from the date of termination of the present Agreement.

Done at Bonn on 8 May 1981 in duplicate in the German, Bengali and English languages, all three texts being authentic. In case of divergent interpretations of the German and Bengali texts, the English text shall prevail.

For the Federal Republic of Germany Hans-Dietrich Genscher

For the People's Republic of Bangladesh Mohammad Shamsul Huq

On signing the Agreement concerning the Promotion and Reciprocal Protection of Investments, concluded between the Federal Republic of Germany and the People's Republic of Bangladesh, the undersigned plenipotentiaries have, in addition; agreed on the following provisions which shall be regarded as an integral part of the said Agreement:

(1) Ad Article 1

Investments made in accordance with the laws and regulations of either Contracting Party within the area of application of that Party's legal system by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Agreement.

(2) -Ad Article 2

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of paragraph 2 of Article 2: the management, maintenance, use, and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of paragraph 2 of 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 that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of Article 2.

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

(3) Ad Article 3

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, or to similar interventions by public authorities. Expropriation shall mean the taking away or restricting of any property right which in itself or in conjunction with other rights constitutes an investment.

(4) Ad Article 4

(a) "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

(b) The Contracting Parties have agreed that the implementation of Article 4 shall not affect the Contracting Parties' legal provisions concerning taxes, levies and other general public charges.

(c) In the event of exceptional balance of payments difficulties the transfer of the proceeds from liquidation may be restricted to annual installments of at least 20 per cent so that the transfer will be completed within a maximum period of five years from the date of

(5) Ad Article 8

A transfer shall be deemed to have been made "without 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 six months.

(6) Ad Article 8

(a) Returns from the investment, as well as returns from reinvested returns, shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular persons who possess a national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be nationals of that Party.

(7) Whenever goods or persons connected with the making of investments are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport. This includes the transportation of:

(a) goods directly intended for an investment within the meaning of the present Agreement or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of the present Agreement are invested;

(b) persons traveling in connection with the making of investments.

Done at Bonn on 6 May 1981 in duplicate in the German, Bengali and English languages, all three texts being authentic. In case of divergent interpretations of the German and Bengali texts, the English text shall prevail.

For the Federal Republic of Germany Hans-Dietrich Genscher

For the People's Republic of Bangladesh Mohammad Shamsul Huq