

# Agreement between the Federal Republic of Germany and the Islamic Republic of Iran on Reciprocal Promotion and Protection of Investments

Preamble

The Federal Republic of Germany and the Islamic Republic of Iran (hereinafter referred to as the Contracting Parties),

Desiring to intensify economic co-operation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments of the investors of the Contracting Parties in each other's territory and,

Recognizing that reciprocal promotion and protection of investments will stimulate the flow of investments between both States,

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement, the meaning of the terms used therein are as follows:

1. The term "investment" refers to every kind of asset, invested directly and/or indirectly by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, including the following:

(a) Movable and immovable property as well as rights related thereto such as leases, mortgages, liens, pledges and usufructs;

(b) Shares or any kind of participation in companies such as securities, debentures, equity holdings and credits;

(c) Title to money and/or receivables and any performance connected with an investment, having an economic value as well as reinvested returns and any increase in the value of the original investment;

(d) Intellectual and industrial property rights, including trademarks, patents, utility models, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;

(e) Any rights having an economic value, including rights 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 as long as the alteration is approved by the competent authority if so required by the host Contracting Party.

2. The term "investor" refers to the following persons of either Contracting Party who invest in the territory of the other Contracting Party within the framework of this Agreement:

(a) Natural persons who, according to the laws of a Contracting Party, are considered to be its nationals;

(b) Entities constituted or incorporated under the laws of a Contracting Party having their seat in the territory of that Contracting Party.

3. The term "returns" refers to the amounts yielded by an investment including profit derived from investments, interests, dividends, royalties and license fees and other fees.

## Article 2. Promotion, Admission and Protection of Investments

(1) Either Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for attraction of investments of investors of the other Contracting Party in its territory.

(2) Either Contracting Party shall in accordance with its laws and regulations admit investments of investors of the other Contracting Party in its territory. Such admission by the competent authority referred to in Article 9 may be given upon certain conditions. Article 9 may be given upon certain conditions.

(3) Both Contracting Parties shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall in no way subject the management, operation, maintenance, use, transformation, enjoyment, sale or assignment of such investments to discriminatory measures.

(4) The investors of either Contracting Party are free to choose international means of transport for the transport of persons and/or capital-goods directly connected with an investment within the meaning of this Agreement.

### **Article 3. National Treatment and Most-favoured-nation Treatment**

(1) Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favourable than that it accords to its own investors and their investments or to investors of any third country and their investments with respect to the management, operation, maintenance, use, enjoyment, sale and liquidation of an investment, whichever is more favourable to the investor.

(2)

(a) The provisions of para 1 shall not apply to the entry and sojourn of persons, however, the Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment. The same shall apply to employed persons of either Contracting Party who, in connection with an investment, wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(b) The following shall, in particular, be deemed "treatment less favourable" within the meaning of para 1 of this Article: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects.

(c) Notwithstanding para (a) and (b) above, 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 para 1 of this Article.

(3) If a Contracting Party has accorded or shall accord in future special advantages, privileges or rights to investors of any third state by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market, or a similar regional organization and/or by virtue of an agreement on the avoidance of double taxation or on any other matters of taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

(4) The provisions of Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its laws are granted only to investors resident in its territory. Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its laws are granted only to investors resident in its territory.

### **Article 4. Expropriation and Compensation Treatment for Damages and Losses**

(1) Investments by investors of either Contracting Party shall enjoy protection and security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effect of which would be tantamount to expropriation, hereinafter called "expropriation", in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or the impending expropriation has become publicly known. The compensation shall be paid without delay. However, in case of delay such compensation shall include the costs thereof. It shall be effectively realizable and freely transferable. Adequate provision shall have been made at or prior to the time of the expropriation for the determination and the giving of such compensation. Any dispute as to the conformity of such expropriation with the relevant legislation, or as to the amount of compensation shall be subject

to review by due process of law in the competent courts of the country where the investment has taken place.

(3) Investors 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 no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors or to investors of any third state as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

## **Article 5. Transfers**

(1) Each Contracting Party shall ensure the transfers related to investments referred to in this Agreement to be made freely and without delay. Such transfers include:

(a) The principal and additional amounts to maintain or increase the investment;

(b) Returns;

(c) Proceeds from the sale and/or liquidation of all or part of an investment;

(d) Royalties and fees related to agreements on the transfer of technology;

(e) Sums paid pursuant to Article 4 and 6 of this Agreement; Article 4 and 6 of this Agreement;

(f) Repayment of loans related to investments;

(g) Monthly salaries and wages and other remuneration received by the employees who have obtained the corresponding work permits related to an investment;

(h) Payments arising out of the settlement of disputes under Article 11. Article 11.

(2) The above transfers shall be effected without delay in a freely convertible currency and at the official market determined rate of exchange. In the absence of such a rate a representative rate applied to recent inward investments shall prevail.

(3) A transfer shall be deemed to have been made "without delay" if effected 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.

(4) Notwithstanding paragraphs (1) to (3), a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of measures to protect the rights of creditors, or relating to or in connection with criminal offenses, orders or judgements in administrative and adjudicatory proceedings, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

## **Article 6. Subrogation**

If a Contracting Party or its designated agency makes a payment to any of its investors under an indemnity insurance or guarantee agreement:

(a) The host Contracting Party shall recognize the other Contracting Party's subrogation under such insurance or guarantee agreement;

(b) The subrogee shall be entitled to exercise the rights which the investor would have been entitled to exercise;

(c) Disputes between the subrogee and the host Contracting Party shall be settled in accordance with Article 11, without prejudice to the rights of a governmental subrogee under Article 10. The subrogee may nevertheless entitle the investor to assert the subrogated rights vis-a-vis the host Contracting Party. Article 10. The subrogee may nevertheless entitle the investor to assert the subrogated rights vis-a-vis the host Contracting Party.

## **Article 7. Observance of Commitments**

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments of investors of the other Contracting Party.

## **Article 8. More Favourable Provisions**

(1) Notwithstanding the terms set forth in this Agreement, more favourable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

(2) If the legislation of either Contracting Party or obligations under international agreements existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

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

This Agreement shall apply to investments approved by the competent authority of the host Contracting Party, if so required by its laws and regulations, made prior to or after the entry into force of this Agreement.

The competent authority in the Islamic Republic of Iran is the Organization for Investment, Economic and Technical Assistance of Iran (OIETA) or the agency which may succeed it.

However, this Agreement shall not apply to disputes which have been raised or settled prior to its entry into force.

## **Article 10. Settlement of Disputes between the Contracting Parties**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as 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 arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: 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 from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other 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 arbitration 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 representatives in the arbitration proceedings, the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled, it shall at the request of either party in dispute, be submitted to the competent court of the host Contracting Party, or provided six months have elapsed since the date when it has been raised, to international arbitration. Unless the parties in dispute have agreed otherwise, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis and in the event that the periods specified in Article 10 (3) for the appointment of the arbitrators and the chairman are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law. Article 10 (3) to (5) shall be applied mutatis mutandis and in the event that the periods specified in Article 10 (3) for the appointment of the arbitrators and the chairman are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of

International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

(3) In the event an investor of a Contracting Party has submitted a dispute to the local competent court the dispute may be referred to international arbitration provided the party submitting the dispute to arbitration bears the costs of the proceedings so far incurred and the court has not yet rendered a judgement in substance, if so required.

(4) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(5) In the event of both Contracting Parties having become Contracting Parties of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such a procedure.

## **Article 12. Consultations**

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

## **Article 13. Validity of the Agreement**

(1) This Agreement shall be ratified by the competent authorities of each Contracting Party in accordance with their laws and regulations.

(2) This Agreement shall enter into force for a period of fifteen years after one month from the date of the last notification of either Contracting Party to the other Contracting Party that it has fulfilled necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with it, 12 months prior to the expiration or termination thereof.

(3) After the expiration of the validity or termination of this Agreement its provisions shall apply to investments under this Agreement for a further period of fifteen years.

(4) Upon entry into force of this Agreement it shall replace the Treaty between the Federal Republic of Germany and the Empire of Iran concerning the Promotion and Reciprocal Protection of Investments of November 11, 1965.

## **Article 14. Language and Number of the Texts**

This Agreement is done in duplicate in the German, Persian and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

Signed in Tehran on August 17th 2002, corresponding to 26 Mordad 1381 by representative of the Contracting Parties.

For the Federal Republic of Germany

R. Reyels

W. Müller

For the Islamic Republic of Iran

Mazaheri