

Model investment promotion agreement between the Federal Republic of Germany and on the promotion and mutual protection of capital investments

The Federal Republic of Germany and

DESIRING to deepen economic cooperation between the two countries,

DESIRING to create favorable conditions for capital investments by nationals or companies of one State in the territory of the other State, and

RECOGNIZING that encouragement and treaty protection of such investments are likely to stimulate private economic initiative and to increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall, wherever possible, encourage investments in its territory by nationals or companies of the other Contracting Party and shall permit such investments in accordance with its laws. It shall in all cases treat investments fairly and equitably.

Article 2.

(1) Each Party shall not treat investments in its territory owned or controlled by nationals or companies of the other Party less favorably than investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Party shall not treat nationals or companies of the other Party less favorably in its territory than its own nationals and companies or nationals and companies of third States with respect to their activities in connection with investments.

Article 3.

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Party only for the general benefit and against compensation. The compensation must correspond to the value of the expropriated investments, be actually realizable and freely transferable, and be paid without delay. At the latest at the time of expropriation, appropriate provision must be made for the determination and payment of compensation. It must be possible to review the legality of the expropriation and the amount of compensation in ordinary legal proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses of capital assets as a result of war or other armed conflict, revolution, state necessity or insurrection in the territory of the other Contracting Party shall not be treated less favorably by that Contracting Party than its own nationals or companies with respect to restitution, compensation, indemnification or other consideration. Such payments shall be freely transferable.

(4) Paragraphs 1, 2 and 3 shall also apply to income from investments.

(5) With respect to matters governed by this Article, nationals or companies of one Party shall enjoy most-favored-nation treatment in the territory of the other Party.

Article 4.

Each Contracting Party shall ensure to nationals or companies of the other Contracting Party the free transfer of capital, income and, in the case of liquidation, proceeds of liquidation, in respect of investments.

Article 5.

If a Contracting Party makes payments to its nationals or companies on the basis of a guarantee in respect of a capital investment in the territory of the other Contracting Party, that other Contracting Party shall, without prejudice to the rights of the first-mentioned Contracting Party under Article 11, The other contracting party shall recognize the transfer to the first-mentioned contracting party of all rights or claims of such nationals or companies by operation of law or by virtue of a legal transaction, as well as the subrogation of the first-mentioned contracting party to all such rights or claims (iibemagene Anspruiche), which the first-mentioned contracting party shall be entitled to exercise to the same extent as its legal transferee. Article 3, paragraphs 2 and 3, and Article 4 shall apply mutatis mutandis to the transfer of the payments to be made to the other contracting party on the basis of the transferred claims.

Article 6.

(1) Unless the parties have made a different arrangement approved by the competent authorities of the Contracting Party in whose territory the investment is situated, transfers under Article 3(2) or (3), Article 4 or Article 5 shall be effected without delay and at the rate prevailing for current transactions on the date of the transfer.

(2) The exchange rate applicable to current transactions shall be based on the par value agreed with the International Monetary Fund and shall be within the fluctuation band on either side of parity permitted under Article IV, Section 3 of the Agreement on the International Monetary Fund.

(3) If, in respect of a Contracting Party, there is no exchange rate within the meaning of paragraph 2 at the time of transfer, the official rate fixed by that Contracting Party for its currency in relation to the US dollar or another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the competent authorities of the Contracting Party in whose territory the capital is invested shall allow a rate of exchange which is just and equitable.

Article 7.

(1) If the laws of a Contracting Party or obligations under international law which exist or may hereafter be established between the Contracting Parties in addition to this Treaty provide for general or special rules which accord to the investments of nationals or companies of the other Contracting Party treatment more favorable than that accorded by this Treaty, such rules shall prevail over this Treaty to the extent that they are more favorable.

(2) Each Contracting Party shall comply with any other obligation it has assumed with respect to investments of nationals or companies of the other Contracting Party in its territory.

Article 8.

(1) The term "investment" includes all property, including but not limited to

- (a) ownership of movable and immovable property and other rights such as mortgages, liens or the like;
- b) share rights in companies and other types of participation;
- c) claims to money or services that have an economic value;
- d) copyrights, industrial property rights, technical processes, trade names and good will;
- e) concessions under public law, including exploration and extraction concessions.

A change in the form in which assets are invested shall not affect their status as capital investments.

(2) The term "income" means those amounts which accrue to a capital investment for a certain period as profit shares or interest.

(3) The term "nationals" means

a) in relation to the Federal Republic of Germany: Germans within the meaning of the Basic Law of the Federal Republic of Germany;

b) in relation to

(4) The term "companies" means

a) in relation to the Federal Republic of Germany: any legal entity or any commercial company or other company or association with or without legal personality which has its registered office in the territory of the Federal Republic of Germany and exists in accordance with the law, irrespective of whether the liability of its shareholders, partners or members is limited or unlimited and whether its activities are profit-oriented or not;

b) in relation to

Article 9.

This Treaty shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the laws of the other Contracting Party in its territory before the entry into force of this Treaty. The Convention of February 27, 1953, on German External Debts shall remain unaffected.

Article 10.

Each Contracting Party shall grant national treatment under this Treaty on the basis that national treatment in the same matters is also granted by the other Contracting Party.

Article 11.

(1) In the event of a difference of opinion concerning the interpretation or application of this Treaty, the Contracting Parties undertake to consult in a friendly spirit with a view to reaching a solution.

(2) If a solution is not reached by the means provided for in paragraph (1) of this Article, the difference of opinion may be referred to

(a) the International Court of Justice

(b) or, at the request of a Party, to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by the appointment of one member by each Party and the agreement of both members on the national of a third State to be appointed by the Governments of the two Parties as chairman. The members shall be appointed within two months, and the chairman within three months, after one Contracting Party has notified the other that it wishes to submit the dispute to arbitration.

(4) If the time limits referred to in paragraph 3 are not observed, either Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties or is otherwise unable to act, the Vice-President shall make the appointment. If the Vice-President is also a national of one of the two Contracting Parties or if he is also unable to attend, the next highest-ranking 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 majority vote. Its decisions shall be binding. Each Contracting Party shall bear the costs of its member and of its representation in the proceedings before the arbitral tribunal; the costs of the umpire and other costs shall be borne equally by the two Contracting Parties. The arbitral tribunal may make other arrangements regarding costs. The arbitral tribunal shall otherwise regulate its own proceedings.

Article 12.

The provisions of this Treaty shall remain in force in the event of a dispute between the Contracting Parties, without prejudice to the right to take temporary measures permitted by the general rules of international law. Such measures shall be terminated at the latest at the time of the actual termination of the dispute, irrespective of whether diplomatic relations have been re-established.

Article 13.

With the exception of the provisions of Protocol No. 7 relating to aviation, the present Treaty shall also apply to the Land of Berlin, unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Government of the..... within three months after the entry into force of the present Treaty.

Article 14.

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible at

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for ten years and shall be renewed indefinitely unless terminated in writing by either Party one year before its expiry. After ten years, the agreement may be terminated at any time, but shall remain in force for one year after termination.

(3) Articles 1 to 13 shall continue to apply for a further twenty years from the date of termination of this Agreement for investments made up to the date of expiry of the Agreement.

Done at at in originals, two in the German language and two in the language, each text being equally authentic.

Protocol

At the time of signing the Treaty on the Promotion and Reciprocal Protection of Investments between the Federal Republic of Germany and, the undersigned Plenipotentiaries have also entered into the following agreements, which shall form an integral part of the Treaty:

1. Ad Article 1

Investments made in accordance with the laws of a Contracting Party within the scope of its legal system by nationals or companies of the other Contracting Party shall enjoy the full protection of the Treaty.

2. Ad Article 2

(a) The activities referred to in Article 2(2) shall include, but not be limited to, the management, use, enjoyment and enjoyment of an investment. Less favorable treatment within the meaning of Article 2(2) shall be deemed to include, in particular: Restrictions on the supply of raw and auxiliary materials, energy and fuels as well as production and operating resources of all kinds, impediments to the sale of products at home and abroad and other measures with a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be regarded as less favorable treatment within the meaning of Article 2.

(b) Article 2 shall not apply to entry, residence and employment as a worker.

3. Ad Article 3

The provisions of Article 3(2) shall also apply to the transfer of a capital investment to public ownership, its placing under public supervision or similar interventions by public authorities. Expropriation shall mean the withdrawal or restriction of any property right which, alone or together with other rights, constitutes a capital investment.

4. Ad Article 4

For the purposes of Article 4, "liquidation" shall also mean a sale for the purpose of the complete or partial abandonment of the capital investment.

5. Ad Article 6

For the purposes of Article 6(1), a transfer shall be deemed to have been effected "without delay" if it is effected within a period normally required for compliance with the transfer formalities. The period shall begin with the submission of the

request and shall under no circumstances exceed two months.

6. Ad Article 8

(a) Income from the investment and, in the event of reinvestment, income from the reinvestment shall enjoy the same protection as the investment.

(b) Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of the Contracting Parties concerned shall, in particular, be considered a national of a Contracting Party.

7.

Each Contracting Party shall refrain from measures which, contrary to the principles of free competition, prevent or impede the participation of the maritime or air transport services of the other Contracting Party in the carriage of goods intended for investment within the meaning of this Treaty or of persons where such carriage is in connection with such investment. This shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds of an enterprise in which assets within the meaning of this Treaty are invested, and to persons if the carriage is performed on behalf of such an enterprise.

Done at on in 4 originals, two in the German language and two in the English language, each text being equally authentic.