

# **Treaty between the Federal Republic of Germany and the Republic of Senegal on the encouragement of capital investments**

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF SENEGAL

DESIRING to deepen economic cooperation between its two Member States,

INCURRING to create favorable conditions for the investments of nationals and companies of the one State in the territory of the other State;

RECOGNIZING that the promotion of these investments is likely to stimulate private enterprise and increase the prosperity of both peoples -

HAVE AGREED AS FOLLOWS:

## **Article 1.**

Each Contracting Party shall, in accordance with its legislation, permit the investments of nationals and companies of the other Contracting Parties in its territory, promote such investments wherever possible, and shall consider the granting of the necessary authorizations with due diligence.

## **Article 2.**

Each Contracting Party shall, in its territory, become the nationals and companies of the other Contracting Parties in respect of the investments which it holds or has in its possession, in respect of its professional and economic activities in connection with such investments, as well as in the management, use and use thereof As their own nationals and companies or nationals and companies of third States.

## **Article 3.**

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

(2) Investments of nationals and companies of a Contracting Party may only be expropriated in the territory of the other Contracting Parties for the general good and for compensation. The compensation shall be equal to the value of the expropriated investment at the time of expropriation, and shall be immediately established and paid; It must in fact be usable and freely transferable. The legality of the expropriation and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) If nationals and companies of a Contracting Party suffer losses in their territories due to war or other armed conflict, revolution or turmoil in the territory of the other Contracting Parties, they shall not be treated less favorably by the Contracting Party as regards their refunds, compensation, compensation or other compensation Nationals and companies. With regard to the transfer of such services, the Contracting Parties mutually agree not to treat the rights of the nationals and companies of the other Contracting Parties more unfavorably than the corresponding rights of the nationals and companies of a third State.

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

## **Article 4.**

Each Contracting Party guarantees the transfer of capital and income to the nationals and companies of the other Contracting Parties, and, in the case of liquidation, the transfer of the proceeds.

## **Article 5.**

If a contracting party is taken advantage of a guarantee for an investment, it shall be entitled to exercise the rights (transferred rights) acquired by virtue of the law or assigned by its predecessor under the same conditions as the latter. Article 3 (2), (3) and (4) and Article 4 shall apply mutatis mutandis to the transfer of the payments to be made to the Contracting Party on the basis of the transfer.

## **Article 6.**

(1) In so far as the parties concerned are not subject to a derogation with the approval of the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 3 (2), (3) and (4) shall be effected without delay and in accordance with Article 4 or Article 5 Transactions on the day of the transfer.

(2) The rate valid for current transactions is based on the par value (par value) agreed with the International Monetary Fund and must be parity (parity) within the fluctuation margin permitted under Article IV (3) of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party on the date of the transfer as referred to in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US Dollar or any other freely convertible currency or gold shall be applied. Where such a price is not fixed, the competent authorities of the Contracting Party in whose territory the investment is situated shall allow a conversion rate which is fair and fair.

## **Article 7.**

If, under the legislation of a Contracting Party or international obligations which exist between the Contracting Parties or which are established in the future, there is a system whereby the capital investments of the nationals and companies of the other Contracting Parties are treated more favorably than under this Treaty The provisions of this Agreement shall remain unaffected. Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 8.**

(1) The term "investments" includes all assets including all rights and interests.

(2) The term "earnings" means those amounts which, within a certain period, are deemed to be a gain or interest on an investment.

(3) The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) As regards the Republic of Senegal:

Natural persons who are Senegal according to the laws and other legislation on Senegal nationality.

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality established in the territory of the Federal Republic of Germany and which, according to the law, is justified as to whether the liability of its shareholders, members or members is restricted or unrestricted, Is aimed at profit or not;

b) As regards the Republic of Senegal:

Any private legal entity whose activity is directed to profit and any legal or commercial legal person (limited liability companies - limited partnerships).

## **Article 9.**

This contract shall also be subject to investments made by nationals and companies of one Contracting Party in accordance with the legislation of the other Contracting Parties in its territory since 27 June 1961.

## **Article 10.**

- (1) Any disputes 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 dispute 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 both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to order the chairman within three months after the one party to the agreement has informed the other that they intend to submit the dispute to an arbitration court.
- (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 is a national of either Contracting Party or if he is prevented for any other reason, The Vice-President to make the appointments. If the Vice-President also has the nationality of either Contracting Party or if he is also prevented from attending, the next member of the Court of Justice who is not a national of either Contracting Party 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. In the rest, the arbitration rules itself.

## **Article 11.**

The provisions of this Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which may be permitted on the basis of the general rules of international law. Measures of this kind will be lifted no later than the actual termination of the dispute, irrespective of whether the diplomatic relations are restored.

## **Article 12.**

This Agreement shall also apply to the Land of Berlin, with the exception of the provisions on aviation, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Republic of Senegal within three months after the entry into force of this Treaty.

## **Article 13.**

- (1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Bonn.
- (2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended indefinitely unless terminated in writing by one of the two Contracting Parties a year before its expiry. After ten years, the contract may be terminated at any time but remains in force for one year after termination.
- (3) For investments made up to the date of the expiry of the contract, Articles 1 to 12 shall apply for a further period of ten years from the date of termination of this contract.

For the Federal Republic of Germany: Walter Schmid

For the Republic of Senegal: Doudou Thiam

## **Protocol**

WHEN SIGNING the Treaty on the Encouragement of Capital Investments, concluded between the Federal Republic of Germany and the Republic of Senegal, the undersigned Plenipotentiaries have agreed, in addition, on the following arrangements which shall be considered as forming an integral part of the Treaty

(1) The Contracting Parties shall enter into negotiations as soon as possible after the entry into force of this Treaty for the conclusion of a Treaty of Establishment which shall regulate matters relating to the following matters entry and exit, temporary and permanent residence, protection against expulsion, admission to and exercise of economic and professional activities, establishment of enterprises without capital limitation and participation in such enterprises, work authorization for managerial and technical personnel, protection and security of person and property, free access to courts of law, freedom to conclude contracts, acquisition of real estate and other property, admission to the establishment of arbitration.

(2) Ad Article 1

(a) Each Contracting Party may, in accordance with its legal and regulatory provisions, decide, within the framework of Article 1, whether it will grant the necessary authorizations.

(b) As long as the legal or regulatory provisions of a Contracting Party require, in the case of capital investments of foreign nationals or companies, an approval or admission procedure, the provisions of this Treaty shall apply to a particular capital investment only after notification by the above-mentioned Contracting Party to the other Contracting Party that the relevant approval or admission procedure has been completed. At the time of notification, such capital investment shall enjoy the full protection of this Treaty.

(3) Ad Article 2

(a) (aa) "Less favourable conditions" within the meaning of Article 2 shall include: restrictions on the acquisition of raw and auxiliary materials, motive power, and fuels, as well as of means of production and operation of any kind, any impediment to the sale of products within the country and abroad, and any other measures having similar effects.

bb) On the other hand, measures taken for reasons of public safety, health, order or morality, the intervention of which would prove necessary, are not considered as "less favorable conditions" within the meaning of Article 2.

(cc) It is understood that measures of a contracting party aimed at the functional reorganization of particular sectors of the national economy shall not be considered as "less favorable conditions" within the meaning of Article 2, provided that such measures are applied equally to its own nationals and companies and to the nationals and companies of Third States.

(b) Article 2 shall not apply to entry, stay and employment as an employee.

(c) Each Contracting Party may, in the interest of its national economy and in connection with the approval or admission of a capital investment by nationals or companies of the other Contracting Party, agree with such nationals or companies in the act of approval or admission to special conditions concerning

(aa) the administration of the capital investment,

(bb) the economic activity

(cc) the reinvestment of the proceeds of the capital investment

(dd) the vocational training and employment of its own nationals.

To the extent that such conditions are agreed upon, the provisions of Article 2 shall not apply. Such conditions shall, however, be valid only if the derogatory measures contained therein are explicitly specified and their modalities laid down in the notification referred to in subparagraph b of number 2 of this Protocol.

(4) Ad Article 3

(a) The provisions of the second paragraph of Article 3 shall also apply to the transfer of a capital investment into public ownership, to its placing under public control or to similar interventions by the State. Expropriation means the withdrawal or limitation of any property right constituting a capital investment, alone or in conjunction with other rights.

(b) It is understood that the application of national legislation on law enforcement and taxation does not constitute expropriation within the meaning of the second paragraph of Article 3.

(5) Ad Article 4

(a) In the Republic of Senegal, the free transfer of capital shall be guaranteed only to investments whose contribution to the

economic development of the country has been previously recognized by a special act of approval. Consequently, the provisions of Article 4 shall not be applied to capital investments made by German nationals and companies until the guarantee of free transfer has been communicated in the notification provided for in paragraph b) of number 2 of this Protocol. The above provisions do not preclude possible agreements on transfer commitments for investments other than those referred to above.

(b) Any disposal carried out with a view to relinquishing all or part of the investment shall also be considered as "liquidation" within the meaning of Article 4.

(6) Ad Article 6

Any transfer that takes place within the time period normally required for the completion of the transfer formalities shall be considered to be effected "without undue delay" within the meaning of the first paragraph of Article 6. The period shall begin to run from the date of submission of the request for transfer together with a file containing all the necessary supporting documents and shall not exceed two months.

(7) Ad Article 8

(a) As long as a Contracting Party uses the procedure provided for in paragraph 2(b) of this Protocol, the provisions of this Treaty shall apply only to property, including rights and interests, which fall within the scope of the activity to which the notification refers.

(b) Without prejudice to other procedures for determining nationality, a person shall be deemed to be a national of a Contracting Party if he or she holds a national passport issued by the competent authorities of the Contracting Party in question.

(8) Each Contracting Party shall refrain from taking measures contrary to the principles of free competition and likely to eliminate or hinder the participation of the maritime and air navigation of the other Contracting Party in the transport of goods intended for capital investment within the meaning of this Treaty. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a Third State with funds from an enterprise in which capital is invested within the meaning of this Treaty.

DONE at Dakar, this twenty-fourth day of January, one thousand nine hundred and sixty-four, in four copies, two of which are in the German language and two in the French language, each text being equally authentic.

For the Federal Republic of Germany:

Walter Schmid

For the Republic of Senegal:

Doudou Thiam

## **Exchange of Letters**

The Ambassador of the Federal Republic of Germany

to

His Excellency,

Minister of Foreign Affairs of the Republic of Senegal

Dakar

Excellency

During the negotiations between the Republic of Senegal and the Federal Republic of Germany on the encouragement of capital investments, an additional agreement was reached on the following point:

"Intending to facilitate the operations and encourage the development of capital investments made by German nationals or companies in Senegal, the government of the Republic of Senegal, even before the entry into force of a Treaty of Establishment, the negotiation of which is envisaged, will grant to German nationals who, in connection with capital

investments made by German nationals or companies, who wish to enter, reside and/or work in the Republic of Senegal, will be granted the necessary authorizations, unless reasons of security, public health and order, or morality prevent it".

I would be grateful if you could confirm your agreement.

Please accept, Excellency, the assurances of my highest consideration.

Dakar, 24 January 1964

Walter Schmid

The Minister of Foreign Affairs of the Republic of Senegal

to

His Excellency,

Mr. Ambassador of the Federal Republic of Germany

Dakar

Excellency

By letter dated today, you kindly informed me that during the negotiation of the Treaty on the encouragement of capital investments between the Republic of Senegal and the Federal Republic of Germany, an additional agreement was reached on the following point:

"With the intention of facilitating the operations and encouraging the development of capital investments made by German nationals or companies in Senegal, the government of the Republic of Senegal, even before the entry into force of a Treaty of Establishment, the negotiation of which is envisaged, will grant to German nationals who in connection with capital investments made by German nationals or companies, who wish to enter, reside and/or work in the Republic of Senegal, will be granted the necessary authorizations, unless reasons of security, public health, public order or morality prevent it".

I have the honor to confirm my agreement.

Please accept, Excellency, the assurances of my highest consideration.

Dakar, 24 January 1964

Doudou Thiam