

# Treaty

Between the Democratic Republic of the Congo and the Federal Republic of Germany on the encouragement and mutual protection of investments in capital

THE DEMOCRATIC REPUBLIC OF THE CONGO

THE FEDERAL REPUBLIC OF GERMANY

DESIRING to intensify economic cooperation between the two States,

CONCERNED to create favorable conditions for the investment of capital by nationals or companies of one of the two States in the territory of the other State and

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

HAVE AGREED AS FOLLOWS:

## Article 1.

Each Contracting Party shall encourage as far as possible the investment of capital in its territory by nationals or companies of the other Contracting Party and shall admit such investments in accordance with its laws. It will treat investments in each case in a fair and equitable manner.

## Article 2.

(1) No Contracting Party shall, in its territory, make investments of which nationals or companies of the other Contracting Party are or are subject to control, treatment less favorable than that accorded to investments of its own nationals and Companies or investments of nationals and companies of third States.

(2) No Contracting Party shall, in its territory, subject nationals or companies of the other Contracting Party, with respect to their activities in connection with investments, to treatment less favorable than that granted to A Its own nationals and companies or to nationals and companies of third States.

(3) By way of derogation from paragraphs 1 and 2 of this Article, the Democratic Republic of the Congo may, in order to correct de facto inequalities between German and Congolese investors, grant to its nationals the preferential granting of credits or fiscal advantages in the Where such benefits do not adversely affect competition and competitiveness.

## Article 3.

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

(2) nationals or companies of one Contracting Party may only be expropriated from their investments in the territory of the other Contracting Party for Public indemnity and Compensation, Compensation shall be equal to the value of the Expropriated Investment, shall be effectively realizable and shall be promptly completed. At the time of the expropriation, at the latest, ti shall be appropriately provided for the fixing and payment of the indemnity. The legality of the expropriation and the amount of compensation must be verifiable by ordinary legal proceedings.

(3) Nationals and companies of a Contracting Party whose investments have suffered damage as the result of an armed conflict, revolution, riot or other disaster in the territory of the other Contracting Party. The other Contracting Party shall be accorded treatment no less favorable than that accorded to its own nationals or companies in respect of refunds, allowances, compensation or other compensation.

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

#### **Article 4.**

(1) Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Party the transfer of the capital invested, the income from such capital and, in the event of expropriation, the transfer of the amount of the indemnity. In the event of liquidation, only the transfer of the invested capital, including reinvested income, is excluded, excluding any capital gains.

(2) As regards the payments provided for in Article 3 (3), any transfer of the amount paid to the nationals or companies of one of the two Contracting Parties shall be governed by the most-favored-nation clause.

#### **Article 5.**

Without prejudice to the provisions of Article 10, if a Contracting Party, under a guarantee for an investment in the territory of the other Contracting Party, makes payments to its own nationals or companies, the other Contracting Party shall recognize the transmission by the batch or contract of all rights and claims of such nationals or companies to the first Contracting Party. She

shall also recognize the right of the other Contracting Party to exercise by that subrogation the full rights and claims of such nationals or companies. The payments to be made under the rights and claims transmitted are also governed by the provisions of Article 4 of this Treaty.

#### **Article 6.**

(1) Insofar as the Contracts concerned have not entered into an arrangement to the contrary approved by the competent authorities of the Contracting Party in whose territory the investment is situated, transfers under Article 4, Article 5 shall be effected without delay and at the exchange rate valid on the date of transfer for current operations.

(2) The rate applicable to current operations shall be the official rate which the Contracting Party has fixed for the currency in relation to the DS dollar, any other freely convertible currency or gold. If a par value (par value) has been agreed with the International Monetary Fund, the price shall be fixed according to this value and shall not exceed the margin of oscillation permitted under Section 3 of Article IV of the Agreement Eu International Monetary Fund, port and other parity (parity).

(3) If no official rate has been established and no parity value (by value) has been agreed with the International Monetary Fund for a Contracting Party at the date of transfer, The competent authorities of the Contracting Party in whose territory the capital is invested shall admit a fair and equitable exchange rate.

(4) As already mentioned in paragraph 1, the applicable exchange rate shall relate to the rate in force on the date of transfer; There shall be no general guarantee of exchange rates on the part of the two central banks by this Article.

#### **Article 7.**

(1) If under the legislation of one Contracting Party or international obligations existing or to be concluded between the Contracting Parties outside the present Treaty general or special regulations shall accord to Investments of nationals or companies of the other Contracting Party treatment more favorable than that provided for in this Treaty, such regulations shall take precedence over this Treaty to the extent that it is more favorable.

(2) In respect of investments, each Party shall observe in its territory any other obligation which it has entered into vis-à-vis the nationals or companies of the other Party-

#### **Article 8.**

(1) Under this Treaty, an "investment" means the aggregate of the tangible and intangible assets of an approved business. These values include:

(A) ownership of movable and immovable property and any other rights in rem, such as mortgages, pledge rights, etc.)

(B) participation rights in companies and other forms of participation)

(C) pecuniary claims or claims relating to services having an economic value;

D) copyrights, industrial property rights, technical processes, trade names and good will;

(E) concessions under public law, including concessions for research and exploitation.

Changes in the form in which assets are invested will not affect their investment quality

(2) "Capital income" means the amount paid as profit or interest on investments for a specified period.

(3) 'Nationals'

(A) in the case of the Democratic Republic of the Congo:

Persons enjoying the status of Congolese under Congolese nationality legislation)

(B) as regards the Federal Republic of Germany:

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

(4) Companies are defined as "

(A) in the case of the Democratic Republic of the Congo:

Any legal person or any organization constituted under the laws of the Democratic Republic of the Congo in the matter)

(B) as regards Federal Republic of Germany:

Any legal entity or any other company or association, inc or without legal personality, having its registered office in the territory of the Federal Republic of Germany and incorporated legally in accordance with the law, irrespective of whether The liability of its partners, participants or members is limited or unlimited and whether its activity is for profit or not.

## **Article 9.**

The layout! Of this Treaty shall also apply to investments of nationals or companies of either Contracting Party existing in the territory of the other Contracting Party before the entry into force of this Treaty, Expressly obtain the benefit. The Interested Party shall give sympathetic consideration to such requests. This provision shall be without prejudice to the Agreement of 27 February 1953 on the External Debts of Germany.

## **Article 10.**

(1) Disputes concerning the interpretation or application of this Treaty shall, if possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute can not be settled in this manner, it shall be submitted to an arbitral tribunal at the request of one of the two Contracting Parties.

(3) The arbitral tribunal shall be constituted ad hoc; Each Contracting Party shall appoint one member and the two members shall agree to elect as its chairman the national of a third State to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within a period of two months, the President within three months after one of the Contracting Parties has informed the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time limits laid down in paragraph 3 are not complied with and in the absence of any other arrangement, either Contracting Party may 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 if he is transferred for another reason, the Vice-President would be responsible for making the appointments. If the Vice- National of one of the two Contracting Parties or if he was also prevented from doing so, it shall be for the member of the Court immediately following in the hierarchy who is not a national of one of the Appointments,

(5) The arbitral tribunal shall decide by majority vote. His dedications are obligatory. Each Contracting Party shall take from its barge the expenses incurred by the arbitrator appointed by it in the arbitral tribunal, the expenses of the President and The other costs shall be borne in equal parts by the two Contracting Parties, and the arbitral tribunal may fix a further regulation concerning costs.

## **Article 11.**

The provisions of this Treaty shall remain in force even in the event of conflicts arising between the Contracting Parties, without prejudice to the right to take provisional measures admissible under the general rules of international law. Measures of this kind shall be abrogated at the latest at the time of the cessation of the conflict, whether diplomatic relations have been restored or not.

## **Article 12.**

Subject to the provisions of paragraph 7 of the Protocol relating to air navigation, this Treaty shall also apply to Land Berlin unless the Government of the Federal Republic of Germany declares otherwise to the Government of the Democratic Republic of The three months following the entry into force of this Treaty.

## **Article 13.**

(1) The present Treaty shall be ratified and the exchange of the instruments of ratification shall take place as soon as possible in Kinshasa.

(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 extended for an indefinite period unless denounced in writing by one of the two Contracting Parties one year before its expiry. At the end of the ten-year period, the Treaty may be denounced at any time, but it shall remain in force for one year after its denunciation.

(3) With respect to investments made before the date of expiry of the Treaty, articles 1 to 12 shall remain in force for fifteen years from the date of expiry of this Treaty.

DONE at Bonn on the eighteenth day of March in the year one thousand nine hundred and sixty-nine, in four copies, two in the French language and two in the German language, each text being equally authentic.

For the Democratic Republic of Congo Bomboko

Minister of State for Foreign Affairs, Cooperation, Foreign Trade and Coordination of Economic and Financial Affairs

For the Federal Republic of Germany Brandt

Minister of Foreign Affairs

Protocol

Laws of the Treaty on the Promotion and Mutual Protection of Capital Investment between the Democratic Republic of the Congo and the Federal Republic of Germany, the undersigned Plenipotentiaries have further agreed on the following arrangements Considered as an integral part of the Treaty:

(T) Ad Article 1 \*

(A) Investments made in accordance with the legislation of either Contracting Party by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

(B) Are within the scope of this Treaty only Investments in the territory of the Democratic Republic of the Congo which have been the subject of a written agreement in accordance with the laws and regulations in force concerning foreign investments. The Congolese Government will give sympathetic consideration to such requests for accreditation.

(2) Ad article 2

(A) The following shall be considered as activities within the meaning of paragraph 2 of Article 2, including, but not limited to, the administration, use, use and enjoyment of an investment. The following shall in particular be regarded as "less favorable treatment" within the meaning of Article 2 (2): any restriction on the purchase of raw materials and auxiliary materials, energy and fuel and on the means of production and operation of any Any interference with the sale of goods within the country and abroad and any other measures having a similar effect. Measures taken for reasons of public security, order and health or morality shall not be considered as "less favorable treatment" within the meaning of Article 2. bj When approving an investment of origin The terms referred to in article 2, paragraph 3, shall necessarily and expressly be included in the instrument of such approval, cj Article 2, paragraph 2, shall not apply to the entry, stay, Employment as an employee.

{3} Ad article 3

The provisions of Article 3, paragraph 2, shall also apply to the changeover from capital investment to public ownership, to public control or similar action by public authorities. Expropriation means the withdrawal or limitation of any right of ownership which, alone or in conjunction with other rights, constitutes an investment of capital.

(4) Ad article 4

Any liquidation within the meaning of Article 4 shall be deemed to include any alteration in the street of total or partial renunciation of the investment

(5) Ad article

Any such transfer shall be deemed to have been effected "without delay" within the meaning of paragraph I of Article 6 and shall take place within the time normally necessary for compliance with the transfer formalities. The period shall begin on the date of the filing of an application and shall in no case exceed two months.

(Ft Ad article 8

(A) Income from invested capital and, in the event of reinvestment, the income from such re-investment shall enjoy the same protection as the investment initiated

(H) Without prejudice to other procedures for the determination of nationality, a person holding a national passport issued by the competent authorities of the Contracting Party concerned shall be considered as a national of a Contracting Party.

(P) Within the framework of this Treaty and without prejudice to matters governed by or governed by specific bilateral or multilateral agreements, each Contracting Party shall refrain from any measure liable to restrict or impair the freedom of choice of investors in Which concerns transport companies.

DONE at Bonn on the eighth day of March in the year one thousand nine hundred and sixty-nine, in four copies, two in the French language and two in the German language, each text being equally authentic.

For the Democratic Republic of Congo Bomboko

Minister of State for Foreign Affairs, Cooperation, Foreign Trade and Coordination of Economic and Financial Affairs

For the Federal Republic of Germany Brandt

Minister of Foreign Affairs

The Minister of State for Foreign Affairs, Cooperation, Foreign Trade and Economic and Financial Aid Coordination of the Democratic Republic of Congo

Bonn, the 1d but 196 »

Minister,

With reference to the Treaty signed today between the Democratic Republic of the Congo and the Federal Republic of Germany concerning the encouragement and mutual protection of capital investments, I have the honor to inform you of the following:

"In order to facilitate the operations and encourage the development of capital investments by German nationals or companies, the Democratic Republic of the Congo shall grant to German nationals who, in connection with capital investments made by German nationals or companies, The Democratic Republic of the Congo, wish to enter, reside and carry on an activity as an employee in the Democratic Republic of the Congo, the necessary authorizations, unless reasons of public order, safety and health or morality do not preclude it. "

I should be grateful if you would confirm your agreement to the foregoing.

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

Bomboko

His Excellency the Minister for Foreign Affairs of

Federal Republic of Germany

Mr. W. Brandt

Bonn

The Minister for Foreign Affairs of the Federal Republic of Germany

Bonn, 18 March 1969

The Minister,

I have the honor to acknowledge receipt of your letter of today's date which reads as follows:

"With reference to the Treaty signed today between the Democratic Republic of the Congo and the Federal Republic of Germany on the encouragement and mutual protection of capital investment, I have the honor to inform you of the following:

Intending to facilitate operations and encourage the development of capital investments by German nationals or companies, the Democratic Republic of the Congo shall grant to German nationals who, in connection with Capital Investments made by German nationals or companies in the Democratic Republic Of the Congo, would like to enter, reside and carry on an activity as an employee in the Democratic Republic of Congo, the necessary authorizations, unless there are reasons of public order, security or sanity.

I would be grateful if you would continue with your agreement to the foregoing. \*

I have the honor to confirm my agreement to the foregoing.

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

Brandt

His excellence

The Minister of State

With the exception of foreign affairs,

Cooperation, Trade

External and co-ordination

Of Economic and Financial Affairs

Of the Democratic Republic of Congo

Bonn