

AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE STATE OF QATAR Concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the State of Qatar

Desiring to intensify economic co-operation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State,

Recognizing that the encouragement and contractual 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.

For the purposes of this Agreement

1. The term "investments" comprises every kind of asset, in particular:

- (a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;
- (b) Shares of companies and other kinds of interest in companies;
- (c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;
- (d) Intellectual, commercial and industrial property rights, in particular copyrights, patents, registered designs, trademarks, trade-names, technical processes, know-how, and good will, as well as trade and business secrets;
- (e) Business concessions conferred by law or under contract including concessions to search for, extract and exploit natural resources in the territory and the maritime area of the Contracting Parties;

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party in which territory the investment is made;

2. The term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

3. The term "investor" means

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

- (1) Germans within the meaning of the Basic Law of the Federal Republic of Germany;
- (2) Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit;

(b) In respect of the State of Qatar:

- (1) Physical persons having the nationality of the State of Qatar;
- (2) Any legal person having the status of a company or corporation or public and semipublic entity constituted in the territory of the State of Qatar in accordance with its legislation or being controlled directly or indirectly by nationals of the State of Qatar;

(3) The Government of the State of Qatar;

4. The term "territory" means:

The territory of each Contracting Party as well as the maritime area of each Contracting Party over which it exercises sovereign rights or jurisdiction in accordance with international law.

Article 2.

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its legislation. Once admitted such investments shall enjoy the full protection of the Agreement. It shall in any case accord such investments fair and equitable treatment in accordance with the principles of international law.

(2) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of investors of the other Contracting Party.

Article 3.

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

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

(3) Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area or any other similar regional Economic Organization.

(4) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4.

(1) Investments by investors of either Contracting Party shall enjoy full 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 effects of which would be tantamount to expropriation or nationalization 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 threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Provisions shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(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 as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors 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 5.

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in

connection with an investment, in particular

- (a) Of the principal and additional amounts to maintain or increase the investment;
- (b) Of the returns;
- (c) In repayment of loans;
- (d) Of the proceeds from the liquidation or the sale of the whole or any part of the investment;
- (e) Of the compensation provided for in Article 4.

Article 6.

If either Contracting Party makes a payment to any of its investors 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 of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 5 shall apply *mutatis mutandis*.

Article 7.

Transfers under Article 4 (2) or (3), under Article 5 or Article 6 shall be made without delay at the current exchange rate prevailing on the date of transfer.

Article 8.

- (1) If the legislation of either Contracting Party or obligations under international law 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.
- (2) In addition, each Contracting Party shall observe any contractual obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 9.

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

- (1) Disputes between the Contracting Parties relating to the interpretation, application or termination of this Agreement shall be settled, if possible, through diplomatic channels.
- (2) If the dispute has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.
- (3) The said Tribunal shall be created as follows for each specific case: each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a national of a third country, who shall be designated as Chairman of the Tribunal. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.
- (4) If the periods specified in the foregoing paragraph above have not been observed, either Contracting Party shall, in the absence of any other agreement, 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, who is not a national of either Contracting Party, shall 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 Tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the Contracting Parties. They shall be taken in conformity with the provisions of this Agreement, and the related principles of international law.

(6) The Tribunal shall set its own rules of procedure. It shall interpret its award at the request of either Contracting Party. Unless otherwise decided by the Tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Contracting Parties. Unless otherwise agreed by the Contracting Parties, the venue of arbitration is the seat of the Permanent Court of Arbitration in the Hague (Netherlands).

Article 11.

(1) Any legal dispute arising directly out of an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties concerned.

(2) If this dispute has not been settled within a period of six months from the date at which it was raised in writing by one or other parties to the dispute, it shall be submitted, at the request of either party to the arbitration of the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

(3) In case the Convention mentioned in the foregoing paragraph is not applicable, then the dispute shall be settled by an ad hoc arbitration. The ad hoc Arbitral Tribunal shall be established as follows:

(a) Each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator, who must be a national of a third country, and who shall be designated as Chairman of the Tribunal by the two parties. All the arbitrators must be appointed within two months from the date of notification by one party to the other party of its intention to submit the dispute to arbitration.

(b) If the periods specified in Section (a) here above have not been met, either party, in the absence of any other agreement, shall invite the Chairman of the International Chamber of Commerce of Paris to make the necessary appointments.

(c) The Tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the parties and shall be enforced in accordance with domestic law. They shall be taken in conformity with the provisions of this Agreement, the laws of the Contracting Party to the dispute and the principles of international law.

(4) The Tribunal shall set its rules of procedure in conformity with the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL). The Tribunal shall interpret its award at the request of either party. Unless otherwise decided by the Tribunal, in accordance with special circumstances, the legal costs, including the fees of the arbitrators, shall be shared equally between the two parties. Unless otherwise agreed by the parties the venue of arbitration is the seat of the Permanent Court of Arbitration in the Hague (Netherlands).

Article 12.

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13.

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Doha.

(2) This Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months notice.

(3) In respect of investments made prior to the date of termination of this 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 this Agreement.

Done at Bonn on 14th of June, 1996 in duplicate in the German, Arabic and English languages, all texts being authentic. In case of divergent interpretation of the German and Arabic texts, the English text shall prevail.

For the Federal Republic of Germany

Helmut Schäfer

Lorenz Schomerus

For the State of Qatar

Mohammed Bin Khalifa Al-Thani

Minister of Finance, Economy and Com.

On signing the Agreement between the Federal Republic of Germany and the State of Qatar concerning the Encouragement and Reciprocal Protection of Investments, 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

(a) Returns from the investment and, in the event of their reinvestment, the returns therefrom shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party.

2. Ad Article 3

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 3 (2): the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 3: restricting the purchase of raw or auxiliary materials, of energy 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 3.

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

(c) 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 in connection with an investment. Applications for work permits shall also be given sympathetic consideration.

3. Ad Article 4

(a) With regard to the State of Qatar the legality of any expropriation, nationalization or comparable measure shall be subject to review by due process of law within the limits prescribed by the law of the State of Qatar if not otherwise agreed by the investor and the State of Qatar.

(b) For the avoidance of doubt, expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in its territory in which an investor of the other Contracting Party has an investment, including through the ownership of shares.

4. Ad Article 7

(a) The current exchange rate of Article 7 should be reflected by the market rates notified on a regular basis to the IMF.

(b) A transfer of funds paid in a local account either in local or foreign currency shall be deemed to have been made "without delay" within the meaning of Article 7 if effected within such period as is normally required for the completion of

transfer formalities. The said period shall commence on the day of the relevant order given by the party concerned to the local bank to transfer the above mentioned funds and shall not exceed two months.

5. Whenever goods or persons connected with an investment 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 shall include the transport of

(a) Goods directly intended for an investment within the meaning of the 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 Agreement are invested;

(b) Persons travelling in connection with an investment.

Done at Bonn on 14th of June, 1996 in duplicate in the German, Arabic and English languages, all texts being authentic. In case of divergent interpretation of the German and Arabic texts, the English text shall prevail.

For the Federal Republic of Germany

Helmut Schäfer

Lorenz Schomerus

For the State of Qatar

Mohammed Bin Khalifa Al-Thani

Minister of Finance, Economy and Com.