Treaty between the Federal Republic of Germany and the Republic of Cabo Verde on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany

and

the Republic of Cabo Verde

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

Article 1.

For the purposes of this Treaty

1. The term "investments" means assets of any kind, in particular

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;

b) Share in companies and other types of participations in companies;

c) Claims on money used to create an economic value or claims on an economic value;

d) Copyright, industrial property rights, technical procedures, trademarks, trade names, know-how and goodwill;

e) Public-law concessions, including concession and concession concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

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

b) With regard to the Republic of Cabo Verde:

Cabo Verde in the sense of the nationality law applicable in the Republic of Cabo Verde;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person or any commercial or other company or association with or without legal personality, whether or not its activity is directed to profit, provided that it is domiciled in the German area of application of this Treaty,

b) With regard to the Republic of Cabo Verde:

Any collective personality, insofar as it has its seat in the Cape Verdean area of application of this Treaty.

Article 2.

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

Article 3.

(1) Each Contracting Party shall treat investments in its territory owned or controlled by nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

Article 4.

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

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became public. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

Article 5.

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

a) Of the capital and additional amounts for the maintenance or expansion of the investment;

b) Of income;

c) To repay loans;

d) Of license or other charges for the rights referred to in Article 1 (1) (d);

e) Of the proceeds in the event of complete or partial liquidation or disposal of the investment.

Article 6.

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

Article 7.

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.

(2) This rate must correspond to the cross-rate, which is the result of the conversion rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

Article 8.

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) 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 9.

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty.

Article 10.

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

(2) If a disagreement 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 appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(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 has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next 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 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. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the arbitration rules set out above may not be invoked with regard to the provisions of Article 27 (1) of the Convention Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

Article 11.

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless otherwise agreed, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis with the proviso that the members of the arbitral tribunal shall be appointed by the parties in accordance with Article 10 (3) and that, , Each Contracting Party may, in the absence of other arrangements, ask the President of the Arbitration Court of the International Chamber of Commerce in Paris to make the necessary appointments. The arbitration shall be enforced under national law.

(3) The Contracting Party participating in the dispute shall not claim as an objection during an arbitration or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part of the loss or for the total loss resulting from an insurance.

(4) In the event that both Contracting Parties also became Contracting States to the Convention of 18 March 1965 on the resolution of disputes between states and nationals of other States, differences of opinion under this Article shall be subject to an arbitration procedure within the framework of the abovementioned Convention, The controversies shall make a different agreement; Each Contracting Party hereby declares its consent to such proceedings.

Article 12.

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 are permitted under the general rules of international law. Measures of this kind are to be lifted no later than the actual end of the dispute, irrespective of whether diplomatic relations exist.

Article 13.

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 6, in so far as it relates to aviation, provided that the Government of the Federal Republic of Germany does not oppose the Government of the Republic of Cabo Verde within three months after the entry into force of the Treaty Declaration.

Article 14.

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

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

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

Done at Bonn, this 18th day of January 1990, in two originals, each in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany

Alois Jelonek

For the Republic of Cabo Verde

A. Rodrigues Pires