

Agreement between the Federal Republic of Germany and the United Arab Emirates for the Promotion and the Reciprocal Protection of Investments

The Federal Republic of Germany and the United Arab Emirates (hereafter collectively referred to as the Contracting States),

Desiring to intensify economic cooperation between both States and intending to create favourable conditions for investments by investors of one Contracting State in the territory of the other Contracting State,

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to stimulation of private business initiative and will increase prosperity in both Contracting States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in any form by the investor of one Contracting State in the territory of the other Contracting State in accordance with its legislation. Without restricting the generality of the foregoing the term "investment" shall include:

(a) Movable and immovable property as well as any other property in rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies as well as securities issued by a Contracting State or its entities;

(c) Claims to money or to any performance having economic value associated with an investment;

(d) Intellectual property rights in particular copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how, trade and business secrets, technical processes, trade names and goodwill;

(e) Business concessions conferred by law or contract and any licences and permits pursuant to law, including the rights to search for, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investments.

2. The term "investor" shall mean

(a) In respect of the Federal Republic Germany:

(aa) Germans within the meaning of the basic law for the Federal Republic of Germany;

(bb) Any juridical person as well as commercial or other company or association with or without legal personality, established in accordance with its laws, and 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 United Arab Emirates:

(aa) Natural persons holding the nationality of the United Arab Emirates in accordance with the laws of the UAE;

(bb) Any entity, with or without legal personality, established in accordance with the laws of the UAE, and having its seat in the UAE, such as enterprises, cooperatives, partnerships, corporations, foundations, companies, firms, establishments, funds, organizations and business associations or similar entities, irrespective of whether their liabilities are limited or

otherwise;

(cc) The Government of the State of the UAE acting either directly or indirectly through their local and federal financial institutions as well as development funds, agencies or other similar government institutions having their seats in the UAE.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees, and payment in kind including returns from reinvestment.

4. The term "territory" means

(a) In respect of the Federal Republic of Germany the territory in which the basic law is applicable including the areas of the exclusive economic zone and the continental shelf insofar as international law permits to exercise sovereign rights or jurisdiction in these areas,

(b) In respect of the United Arab Emirates its territory, including islands, territorial sea and other areas in the sea within which the United Arab Emirates exercises under its laws in conformity with international law sovereign rights or jurisdiction.

5. Associated activities include the organization, control, operation, maintenance or other facilities for the conduct of business and the performance and enforcement of contracts.

Article 2. Promotion and Protection of Investments

(1) Each Contracting State shall as far as possible encourage investments from the other Contracting State in its territory and in accordance with its legislation shall admit such investments. Once established, investments shall enjoy full protection and security.

(2) Each Contracting State shall accord fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, maintenance, use, and enjoyment, shall not in any way be impaired by arbitrary, unreasonable or discriminatory measures.

Article 3. National Treatment and Most Favoured Nation Treatment

(1) Each Contracting State shall accord investments made in its territory owned or controlled by investors of the other Contracting State treatment not less favourable than that which it accords in like situations to investments of its own investors or investors of any third State, whichever is the most favourable.

(2) Each Contracting State shall accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, or disposal of their investments, means of asserting rights thereto, transfers, compensation, or any other associated activity therewith in its territory treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable.

(3) Such treatment shall not relate to privileges, benefits or incentives which either Contracting State accords to investors of third states on account of its membership of, or association with, any existing or interim agreements leading to a customs or economic union, a common market, a free trade area, a monetary union or similar international agreement.

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

Article 4. Protection of Investments

(1) Investments by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State.

(2) Investments by investors of either Contracting State shall not - neither directly nor indirectly through measures directed towards a company in which the investor holds an investment - be expropriated, nationalized or subjected to any other measure having effects equivalent to expropriation or nationalization (hereafter collectively referred to as "expropriation") by the other Contracting State except for the public benefit of that State and against prompt, adequate and just compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application. The legality of any such expropriation and the amount of compensation shall at the request of the investor be subject to review by due process of law.

(3) Such compensation shall be equivalent to the fair market-value of the investment, as determined in accordance with recognised principles of valuation such as, inter alia, the capital invested, replacement value, appreciation, current returns,

goodwill and other relevant factors, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is the earlier. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position not less favourable than the position in which he would have been, had the compensation been paid immediately on the date of expropriation. To achieve this goal the compensation shall include interest at the prevailing commercial rate, however, in no event less than the current LIBOR-rate from the date of expropriation until the date of payment. The determination of the amount of compensation in the absence of agreement being reached between the investor and the host state, shall at the request of the investor be referred to arbitration or local courts. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without undue delay.

(4) The provisions of this Article shall apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from such liquidation.

(5) Investments of either Contracting State or any of its investors shall not be subjected to sequestration, confiscation or any similar measures except under due process of law.

Article 5. Compensation for Damages or Losses

(1) Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the latter Contracting State shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting State accords to its own investors or to investors of any third State whichever is the most favourable. Resulting payments shall be in freely convertible currency and freely transferable without undue delay.

(2) Investors of one Contracting State who in any of the events referred to in paragraph (1) suffer damage or loss in the territory of the other Contracting State resulting from:

- (a) Requisition of their investment or property by its forces or authorities,
- (b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt and adequate compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely convertible currency and freely transferable without undue delay.

Article 6. Free Transfer

(1) Each Contracting State shall guarantee to investors of the other Contracting State 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 compensation provided for in Article 4 and 5;
- (f) Of payments referred to in Article 7.

(2) These transfers shall be made without undue delay at the applicable rate of exchange.

(3) In case no market exchange rate is established then the rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversion of the currencies concerned into Special Drawing Rights.

Article 7. Subrogation

(1) In the event that one Contracting State has provided a guarantee in respect of non-commercial risks for the investment

effected by one of its investors in the territory of the other Contracting State, and has effected payment to said investor on the basis of that guarantee, the other Contracting State shall recognize the assignment and the enforcement of the rights of the investor to the first named Contracting State, whose right of subrogation shall not exceed the original rights of the investor. In relation to the transfer of payments to the Contracting State by virtue of this assignment, the provisions of Article 4, 5 and 6 shall apply.

(2) Questions arising from the subrogation will be consulted among the Contracting States on the request of either side.

Article 8. Settlement of Investment Disputes between a Contracting State and an Investor

(1) All kinds of investment disputes between a Contracting State and an investor of the other Contracting State shall, as far as possible, be settled amicably.

(2) If the dispute cannot be settled in the way prescribed in paragraph (1) within six months of the date the request for settlement has been submitted, it shall at the request of the investor be filed to the competent court of the Contracting State in whose territory the investment was made.

(3) If there still exists a dispute between the parties after 24 months from the date of notification of the above-mentioned procedures the investor may submit the dispute to international arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, unless the parties agree otherwise.

Both Contracting States herewith declare their consent to submit the dispute to arbitration under the said Convention.

(4) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

(5) Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have been exhausted or a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

Article 9. Settlement of Disputes between Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall be settled as far as possible through friendly consultations by both Contracting States through diplomatic channels.

(2) If a dispute cannot thus be settled within six months it shall, upon the request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted as follows: each Contracting State shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting States provided that the Contracting States have diplomatic relations with that third State. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an Arbitral Tribunal.

(4) If the periods specified in paragraph (3) above have not been observed, either Contracting State may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting State 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 State shall be invited to make the necessary appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its member and of its representatives in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting States. The Arbitral Tribunal may make a different ruling concerning costs. In all other respects, the Arbitral Tribunal shall determine its own procedure.

Article 10. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting State in accordance with its legislation by investors of the other Contracting State prior to as well as after the entry into force of this Agreement.

Article 11. Relations between Contracting States

This Agreement shall remain in force irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 12. Application of other Rules and Special Commitments

(1) If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contain regulations, whether general or specific, entitling investments by investors of the other Contracting State to a treatment more favourable than is provided for by this Agreement, such regulations to the extent that they are more favourable shall prevail over this Agreement.

(2) Special contracts or commitments undertaken by one Contracting State with respect to the investments of investors of the other Contracting State, to the extent that their provisions are more favourable shall prevail over the provisions of this Agreement.

(3) Each Contracting State shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting State.

Article 13. Duration and Termination

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

(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 State twelve months before its expiration. After the expiry of ten years, this Agreement may be denounced at any time by either Contracting State 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 Abu Dhabi on June 21 st, 1997 corresponding to Hijra 15. Safar 1418 in duplicate in the German, Arabic and English languages, all texts being authentic. In case of divergent interpretations of the German and the Arabic texts, the English text shall prevail.

For the Federal Republic of Germany

Schneller

For the United Arab Emirates

Mohammed Khalfan Bin Kharbash