

GERMANY-INDIA INVESTMENT GUARANTY AGREEMENT*
[Signed at Bonn, October 15, 1964]

No. T-27/59-III.

Ambassador of India
Bonn

October 15, 1964.

Excellency,

I have the honour to refer to the recent discussions which took place between the Representatives of the Government of India and the Representatives of the Government of the Federal Republic of Germany in order to exchange ideas on the need to encourage German private investments in India.

Considering that

the Government of India welcome private foreign investment particularly in industry in accordance with the priorities established in their Plans, and have been following a policy intended to encourage such investment;

it has been the policy of the Government of India freely to allow transfer of profits, interest, dividends, royalties, and of repayment of loans after payment of taxes as well as repatriation of the proceeds of liquidation;

the Government of the Federal Republic of Germany are actively promoting German private investments abroad by offering loans and tax concessions to intending German investors, and by issuing Federal guarantees;

in all matters relating to such investments the Government of the Federal Republic of Germany intend in similar circumstances, to give investments in India a treatment no less favourable than that accorded to investments in any other country; an understanding has been reached as a result of these discussions, which may be summed up as follows:

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*[Reproduced from a text provided by the Embassy of India. The investment guaranty agreement between India and the United States signed at Washington, September 19, 1957, appears at 8 U.S.T. 1442, T.I.A.S. 3900, 290 U.N.T.S. 175; and the amendment of December 7, 1959, appears at 10 U.S.T. 1997, T.I.A.S. 4368, 361 U.N.T.S. 366.]

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1. The Government of India welcome the steps taken by the Government of the Federal Republic of Germany and agree that the following provisions shall apply to German assets, including those from Land Berlin, in India provided the investment of such assets has been approved on or after the 15th October, 1964, in accordance with the Indian laws referred to in paragraph 2, and the rules and regulations framed thereunder (hereinafter referred to as "investments"):
 - a) German investors shall in matters related to their investments not be subject to treatment less favourable than that accorded to national or other foreign investors in similar circumstances.
 - b) German investors shall be permitted after payment of taxes to transfer to the Federal Republic of Germany profits, interest, dividends and royalties derived from their investments as well as repayments of loans.
 - c) In the event of total or partial liquidation of a German investment in India, the proceeds of such liquidation may be transferred without undue delay or in such manner as may have been laid down in the document of approval or consent before the investment was made.
 - d) The Government of India do not intend, as a rule, to nationalize or expropriate approved foreign investments. Any decision to nationalize or expropriate a German

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investment or part of it taken by the Government of India shall be based on practical considerations and be taken in the national interest. In the event of a German investor being directly or indirectly deprived of his investment by nationalisation or expropriation, the Government of India shall pay fair and equitable compensation and shall permit its effective transfer without undue delay.

- e) The rate of exchange for transfers under the foregoing sub-paragraphs shall be the rate for current transactions within the meaning of the provisions of the International Monetary Fund.
- f) The Government of India will grant in accordance with their general policy the necessary permits to German nationals whose training or experience is specially required by an investment and who desire to enter and stay in India to carry on activities related to such investment except in so far as reasons of public order, security, public health or morality warrant otherwise.

- 2. An investment is considered approved within the meaning of paragraph 1 when the necessary authorisations have been issued. The laws governing such authorisations are at present the Capital Issues Control Act, the Foreign Exchange Regulations Act, the Industries (Development and Regulation) Act and the Indian Companies Act. If and when other or further authorisations become necessary on the ground of changes in the relevant Indian legislation, such new requirements shall be communicated to the

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Government of the Federal Republic of Germany by the Government of India. In respect of investment made after the date of such communication, the authorisations mentioned therein shall be considered as necessary authorisation within the meaning of the first sentence of this paragraph.

3. If the Federal Republic of Germany has given a guarantee for an investment, and if any right or title of the investor has by virtue of law or legal transaction been transferred to the Federal Republic of Germany in accordance with the guarantee arrangements, the Government of India will recognize the transfer of any right or title of such investor to the Federal Republic of Germany and the subrogation, by virtue of law or legal transaction, of the Federal Republic of Germany to any such right or title.
4. a) In the event of disputes concerning the interpretation or application of this note the Government of India and the Government of the Federal Republic of Germany shall enter into consultations with a view to settling the disputes to mutual satisfaction.
- b) If the two Governments do not succeed in settling such a dispute by agreement within a reasonable period of time, it may be referred by either Government for final and binding determination to an arbitral tribunal, provided the dispute refers to a matter or question in respect of which the Federal Republic of Germany has or had assumed a guarantee.
- c) The arbitral tribunal shall comprise three arbitrators, one arbitrator to be named by each Government and the third to be agreed upon by the two arbitrators so chosen, provided such

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third arbitrator shall not be a national of either country. Each Government shall designate an arbitrator within two months of the date of delivery by either Government to the other Government of a diplomatic request for arbitration or dispute. The third arbitrator shall be agreed upon within two months. If any of the arbitrators is not designated or agreed upon within the time limits indicated, either Government may request the President of the International Court of Justice to make the necessary appointment or appointments by choosing the arbitrator or arbitrators. The arbitrators shall base their award on Article 38 of the Statute of the International Court of Justice.

5. The foregoing provisions shall also apply to German investments made or approved between January 1, 1960 and October 15, 1964 in respect of which the Government of the Federal Republic of Germany have issued or will issue a guarantee to cover non-commercial risks.
6. a) The Government of India reserve the right to revoke or modify this note after a period of notice of six months. In such event, however, the provisions of paragraphs 1 to 5 of this note shall continue to apply to investments made during the period of validity of this note for a period of five years after its expiry or fifteen years after the date of any such investment, whichever is longer.
- b) The Government of India have taken note that the Government of the Federal Republic of Germany regard this understanding as provisional and may make proposals for its amendment, particularly in the event of the conclusion of a multi-lateral convention on

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protection of investments or of a bilateral
agreement.

7. I should be grateful if you would please
acknowledge receipt of this note and confirm
that its contents correctly set out the
understanding reached between our two
Governments.

Accept, Excellency, the assurance of
my highest consideration.

Sd/- P. Achutha Menon
Ambassador of India.

His Excellency Mr. Rolf Lahr,
State Secretary,
Foreign Office,
BONN

T r a n s l a t i o n

The State Secretary
in the Foreign Office

III A 3 - SB 92.12 (7)

Bonn, 15th October, 1964

Excellency,

I have the honour to acknowledge the receipt of
your note No. T - 27/59 - III, dated 15th October, 1964,
the German translation of which reads as follows:

"German text"

I have the honour to inform you that the
contents of your foregoing note correctly sets out the
understanding reached between our two Governments.

Accept, Excellency, the assurance of my
highest consideration.

sd/- Lahr

His Excellency,
the Ambassador of India,
Mr. P. Achutha Menon,
B o n n .

No.T-27/59(1)/III.

Ambassador of India
Bonn

October 15, 1964.

Excellency,

I have the honour to refer to today's note of the Government of India regarding the encouragement and protection of German private investment in India and to state as follows:

1. a) It is our understanding that nothing in the note shall prevent the Government of India from imposing temporary restrictions on transfers referred to in paragraph 1 of the note in exceptional circumstances when a transfer without undue delay would result in serious strain on India's monetary reserves taking into account India's total transfer commitments and balance of payments situation.
- b) In such exceptional circumstances the amounts to be transferred shall be promptly determined in Deutsche Mark at the then prevailing rate of exchange (sub-paragraph c of paragraph 1 of the note) and the actual transfer of either shall be permitted to be made in equal annual instalments spread over as few years as possible but not exceeding one year in the case of sub-paragraph b of paragraph 1 of the note, three years in the case of sub-paragraph d of paragraph 1 of the note and six years in the case of sub-paragraph c of paragraph 1 of the note.
- c) If and when any restrictions of the type referred to in sub-paragraphs a and b of this paragraph are imposed, the two Governments shall, upon request of either Government, enter into consultations with a view to settling the matter to mutual satisfaction.
2. If circumstances so warrant it shall be open to the two Governments to consult with each other with a view to extending the time limits set out in sub-paragraph a

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b of paragraph 1 of this letter.

3. With reference to sub-paragraph b of paragraph 4 of the note, arbitration shall cover the whole disputed amount irrespective of the quantum of liability of the Federal Republic of Germany to pay compensation under its guarantee.
4. The present letter is deemed to be an integral part of the note.

I should be grateful for your confirmation that the foregoing correctly sets out the understanding reached between our two Governments.

Accept, Excellency, the assurance of my highest consideration.

Sd/- P. Achutha Menon
Ambassador of India.

His Excellency Mr. Rolf Lahr,
State Secretary,
Foreign Office,
BONN

T r a n s l a t i o n

The State Secretary
in the Foreign Office

III A 3 -SB 62.12(7)

Bonn, 15th October, 1964.

Excellency,

I have the honour to acknowledge the receipt of
your letter No.T-27/59(1)/III, dated 15th October, 1964,
the German translation of which reads as follows:

" German ~~text~~ "

I have the honour to inform you that the statements
contained in your letter correctly set out the understanding
reached between our two Governments.

Accept, Excellency, the assurance of my highest
consideration.

sd/- Lahr

His Excellency,
the Ambassador of India,
Mr.P.Achutha Menon,
B o n n .