

German Model Treaty -2008

Treaty

between

the Federal Republic of Germany

and

.....

concerning

the Encouragement and Reciprocal Protection of Investments

Federal Ministry for Economics and Technology

The Federal Republic of Germany
and

..... —

desiring to intensify economic co-operation between the two 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
Definitions

Within the meaning of this Treaty,

1. the term "investments" comprises every kind of asset which is directly or indirectly invested by investors of one Contracting State in the territory of the other Contracting State. The investments include 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 property rights, in particular copyrights and related rights, patents, utility-model patents, industrial designs, trademarks, plant variety rights;
- (e) trade-names, trade and business secrets, technical processes, know-how, and goodwill;
- (f) business concessions under public law, including concessions to search for, extract or exploit natural resources;

any alteration of the form in which assets are invested shall not affect their classification as investment. In the case of indirect investments, in principle only those indirect investments shall be covered which the investor realizes via a company situated in the other Contracting State;

- 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:

- any natural person who is a German within the meaning of the Basic Law of the Federal Republic of Germany or a national of a Member State of the European Union or of the European Economic Area who, within the context of freedom of establishment pursuant to Article 43 of the EC Treaty, is established in the Federal Republic of Germany;

- any juridical person and any commercial or other company or association with or without legal personality which is founded pursuant to the law of the Federal Republic of Germany or the law of a Member State of the European Union or the European Economic Area and is organized pursuant to the law of the Federal Republic of Germany, registered in a public register in the Federal Republic of Germany or enjoys freedom of establishment as an agency or permanent establishment in Germany pursuant to Articles 43 and 48 of the EC Treaty;

which in the context of entrepreneurial activity is the owner, possessor or shareholder of an investment in the territory of the other Contracting State, irrespective of whether or not the activity is directed at profit;

(b) in respect of

-
-

4. the term "territory" refers to the area of each Contracting State including the exclusive economic zone and the continental shelf insofar as international law allows the Contracting State concerned to exercise sovereign rights or jurisdiction in these areas.

Article 2

Admission and protection of investments

(1) Each Contracting State shall in its territory promote as far as possible investments by investors of the other Contracting State and admit such investments in accordance with its legislation.

(2) Each Contracting State shall in its territory in every case accord investments by investors of the other Contracting State fair and equitable treatment as well as full protection under this Treaty.

(3) Neither Contracting State shall in its territory impair by arbitrary or discriminatory measures the activity of investors of the other Contracting State with regard to investments, such as in particular the management, maintenance, use, enjoyment or disposal of such investments. This provision shall be without prejudice to Article 7 (3).

(4) Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original investment.

Article 3

National and most-favoured-nation treatment

(1) Neither Contracting State shall in its territory subject investments owned or controlled by investors of the other Contracting State 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 State shall in its territory subject investors of the other Contracting State, as regards their activity in connection with investments, to treatment less favourable than it accords to its own investors or to investors of any third State. The following shall, in particular, be deemed treatment less favourable within the meaning of this Article:

1. different treatment in the event of restrictions on the procurement of raw or auxiliary materials, of energy and fuels, and of all types of means of production and operation;
2. different treatment in the event of impediments to the sale of products at home and abroad;
and
3. other measures of similar effect.

Measures that have to be taken for reasons of public security and order shall not be deemed treatment less favourable within the meaning of this Article.

(3) Such treatment shall not relate to privileges which either Contracting State 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.

(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 an agreement for the avoidance of double taxation in the field of taxes on income and assets or other agreements regarding matters of taxation.

(5) This Article shall not oblige a Contracting State to extend to investors resident in the territory of the other Contracting State tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

(6) The Contracting States shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting State who wish to enter the territory of the other Contracting State in connection with an investment; the same shall apply to employed persons of either Contracting State who in connection with an investment wish to enter the territory of the other Contracting State and sojourn there to take up employment. Where necessary, applications for work permits shall also be given sympathetic consideration.

(7) Notwithstanding any bilateral or multilateral agreements which are binding on both Contracting States, the investors of the Contracting States are free to select the means of transport for the international transportation of persons and of capital goods directly related to an investment within the meaning of this Treaty. Transport companies of the Contracting States shall not be discriminated against thereby.

Article 4

Compensation in case of expropriation

(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 may not directly or indirectly 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 State except for the public benefit and against compensation. Such compensation must be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or other measure became publicly known. The compensation must be paid without delay and shall carry the usual bank interest until the time of payment; it must be effectively realizable and freely transferable. Provision must have been made in an appropriate manner at or prior to the time of expropriation, nationalization or other measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or other measure and the amount of compensation must be subject to review by due process of law.

(3) Investors of either Contracting State whose investments suffer losses in the territory of the other Contracting State 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 State than that State accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments must be freely transferable.

(4) Investors of either Contracting State shall enjoy most-favoured-nation treatment in the territory of the other Contracting State in respect of the matters provided for in the present Article.

Article 5

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

1. the principal and additional amounts to maintain or increase the investment;
2. the returns;
3. the repayment of loans;
4. the proceeds from the liquidation or the sale of the whole or any part of the investment;
5. the compensation provided for in Article 4.

(2) Transfers under Article 4 (2) or (3), under the present Article or Article 6, shall be made without delay at the market rate of exchange applicable on the day of the transfer. A transfer shall be deemed to have been made without delay if made within such period as is normally required for the completion of transfer formalities. The period shall commence with the submission of the corresponding application, where such an application is necessary, or the notification of the intended transfer, and must in no circumstances exceed two months.

(3) Should it not be possible to ascertain a market rate pursuant to paragraph (2), the cross rate obtained from those rates which would be applied by the International Monetary Fund on the

date of payment for conversions of the currencies concerned into Special Drawing Rights shall apply.

Article 6 Subrogation

If either Contracting State makes payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting State, the latter Contracting State shall, without prejudice to the rights of the former Contracting State under Article 9, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such investors to the former Contracting State. Furthermore, the latter Contracting State shall recognize the subrogation of that Contracting State to any such right or claim (assigned claim), which that Contracting State shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments on the basis of such assignment, Article 4 (1) and (2) and Article 5 shall apply *mutatis mutandis*.

Article 7 Other provisions

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

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

(3) With regard to the treatment of income and assets for the purpose of taxation, precedence shall be given to the application of the agreements in force at the time between the Federal Republic of Germany and ... for the avoidance of double taxation in the field of taxes on income and assets.

Article 8

Scope of application

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

Article 9

Settlement of disputes between the Contracting States

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

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting State be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each case 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. The members shall be appointed within two months, and the chairman within three months, from the date on which either Contracting State has informed the other Contracting State that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph (3) have not been observed, either Contracting State may, in the absence of any other relevant agreement, 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 should 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Its decisions shall be binding. Each Contracting State shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting States. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 10

Settlement of disputes between a Contracting State and an investor of the other Contracting State

(1) Disputes concerning investments between a Contracting State and an investor of the other Contracting State should as far as possible be settled amicably between the parties to the dispute. To help them reach an amicable settlement, the parties to the dispute also have the option of agreeing to institute conciliation proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID).

(2) If the dispute cannot be settled within six months of the date on which it was raised by one of the parties to the dispute, it shall, at the request of the investor of the other Contracting State, be submitted to arbitration. The two Contracting States hereby declare that they unreservedly and bindingly consent to the dispute being submitted to one of the following dispute settlement

mechanisms of the investor's choosing:

1. arbitration under the auspices of the International Centre for Settlement of Investment Disputes pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID), provided both Contracting States are members of this Convention, or
2. arbitration under the auspices of the International Centre for Settlement of Investment Disputes pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID) in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, where the personal or factual preconditions for proceedings pursuant to figure 1 do not apply, but at least one Contracting State is a member of the Convention referred to therein, or
3. an individual arbitrator or an ad-hoc arbitral tribunal which is established in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL) as in force at the commencement of the proceedings, or
4. an arbitral tribunal which is established pursuant to the Dispute Resolution Rules of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) or the Arbitration Institute of the Stockholm Chamber of Commerce, or
5. any other form of dispute settlement agreed by the parties to the dispute.

(3) The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the Convention or arbitral rules on which the arbitral proceedings chosen by the investor are based. The award shall be enforced by the Contracting States as a final and absolute ruling under domestic law.

(4) Arbitration proceedings pursuant to this Article shall take place at the request of one of the parties to the dispute in a State which is a Contracting Party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

(5) During arbitration proceedings or the enforcement of an award, the Contracting State involved in the dispute shall not raise the objection that the investor of the other Contracting State has received compensation under an insurance contract in respect of all or part of the damage.

Article 11

Relations between the Contracting States

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

Article 12

Registration clause

Registration of this Treaty with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated immediately following its entry into force by the Contracting State in which the signing took place. The other Contracting State shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat of the United Nations.

Article 13

Entry into force, duration and notice of termination

(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 on the first day of the second month following the exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting State twelve months before its expiration. After the expiry of the period of ten years this Treaty 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 Treaty, the provisions of the above Articles shall continue to be effective for a further period of twenty years from the date of termination of this Treaty.

Done in _____ on _____ in duplicate in the German and
..... languages, both texts being equally authentic.

For the
Federal Republic of Germany

For
.....