

Treaty between the Federal Republic of Germany and the State of Israel concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany And the State of Israel,

DESIRING to intensify economic co-operation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State and

RECOGNIZING that encouragement and protection of investments under this Treaty are apt to stimulate private business initiative and to increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1

For the purpose of the present Treaty:

- (a) The term 'investment' shall mean, as the context may require, either
 - (i) investment in an enterprise involving active participation therein and the acquisition of assets ancillary thereto, or
 - (ii) the enterprise or assets acquired as a result of such investment.
 - (b) The said assets shall include in particular
 - (i) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;
 - (ii) shares of companies and other kinds of Interest;
 - (iii) claims to money or to any performance which has an economic value and, according to its purpose and scope, is in the nature of an interest;
 - (iv) copyrights, industrial property rights, technical processes, trade-marks, trade-names, know-how and good will;
 - (v) business concessions under public law, including concessions to search for, extract or exploit natural resources.
- Any admitted alteration of the form to which assets are invested shall not affect- their classification as an investment.

(c) The said term 'investment' shall refer:

(i) in respect of investments in the territory of the Federal Republic of Germany, to all investments made in accordance with its legislation and

(ii) in respect of investments in the territory of the State of Israel, to all investments admitted by Israel by a document of admission.

(2) The term 'returns' shall mean the amounts yielded periodically by an investment as profit, dividends, interest, licence or other fees.

(3) The term 'nationals' shall mean

(a) in respect of the Federal Republic of Germany: Germany within the meaning of the Basic Law for the Federal Republic of Germany;

(b) in respect of the State of Israel: Israeli nationals being permanent residents of the State of Israel

(4) The term 'companies' shall mean:

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

any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the German area of application of the present Treaty and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

(b) in respect of the State of Israel:

companies, partnerships, cooperative societies and associations registered in and owned or controlled by permanent residents of the State of Israel.

Article 2

Each Contracting Party shall as far as possible promote and admit into its territory in accordance with its legislation the investment of capital by nationals or companies of the other Contracting Party.

It shall in any case accord such investments fair and equitable treatment.

Article 3

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

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

(3) The treatment so granted shall not apply to benefits, immunities or conditions which either Contracting Party grants to nationals or companies of a third country because of its membership in, or association with, a customs union a common market or a free trade area.

Article 4

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

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated or nationalized in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall be calculated in accordance with the value of the investment concerned immediately before the date on which the expropriation or nationalization was publicly announced. The compensation shall be paid without undue delay and shall carry interest in the circumstances and upon the terms applicable to the nationals of the Contracting Party effecting the expropriation or nationalization.

It shall be actually realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation or nationalization for the determination and payment of such compensation. The legality of any such expropriation or nationalization and the amount of compensation shall be subject to review by local judicial remedies.

(3) Nationals or companies 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 Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies 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 the present Article.

Article 5

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

- (a) of the capital and additional amounts to maintain or increase the investment;
- (b) of the returns;
- (c) in repayment of loans;
- (d) of licence and other fees for the rights defined in subparagraph (b) (iv) of paragraph 1 of Article 1;
- (e) of the proceeds from the sale of the whole or any part of the investment.

Article 6

If a Contracting Party makes payments to any of its nationals or companies under a guarantee against non-commercial risks in respect of an investment in the territory of the other Contracting Party, it shall be subrogated to the rights of that national or company as against the latter Contracting Party to the extent that such payment was within such rights.

As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation, paragraphs 2 and 3 of Article 4 and Article 5 shall apply mutatis mutandis.

Article 7

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraph 2 or 3 of Article 4, under Article 5 or Article 6 shall be made without delay in the agreed currency and at the rate of exchange actually used for current transactions on the day the transfer is made. This rate of exchange shall be in accordance with the pertinent regulations of the International Monetary Fund.

(2) If no such rate and no official rate in relation to a freely convertible currency has been fixed, a fair and equitable rate of exchange shall be admitted.

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 the present Treaty contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such regulation shall to the extent that it is more favourable prevail over the present Treaty.

(2) Each Contracting Party shall comply with any other obligations that it may have incurred by virtue of any investment agreement between itself and any nationals or companies of the other Contracting Party.

Article 9

The present Treaty shall also apply to investments made prior to its entry into force by nationals or companies 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 concerning the interpretation or application of the present Treaty should as far as possible be settled by the Governments of the two Contracting Parties.

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

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party 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 Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party 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 Party may, in the absence of any other relevant arrangement, invite the President of the European Court of Human Rights to make the necessary appointments. If the President is a national of either Contracting Party, or of a country not maintaining diplomatic relations with either Contracting Party, or if he is otherwise prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting Party, or of a country not maintaining diplomatic relations with either Contracting Party, shall make the necessary appointments.

(5) Local judicial remedies shall be exhausted before any dispute is submitted to an arbitral tribunal.

(6) The arbitral tribunal shall reach its decision on the basis of the Treaties existing between the Contracting Parties and of general international law, and taking into account the local law of the Contracting Party in which the investment is situated.

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

(8) If both Contracting Parties are members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States the arbitral tribunal provided for above may in consideration of the provisions of paragraph 1 of Article 27 of the said Convention not be appealed to insofar as agreement has been reached between the national or company of one Contracting Party and the other Contracting Party under Article 25 of the Convention. This shall not affect the possibility of appealing to such arbitral tribunal in the event that a decision of the Arbitral Tribunal established under the said Convention (Article 27) is not complied with or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 6 of the present Treaty.

Article 11

The provisions of the present Treaty shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 12

The present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the State of Israel within three months of the date of entry into force of the present Treaty.

Article 13

(1) The present Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

(2) The present Treaty shall enter into force one month from the date of the 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 except if denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years the present Treaty may be denounced at any time by either Contracting Party giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, 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 the present Treaty.

DONE at Bonn on 24 June 1976 in duplicate in the German, Hebrew and English languages, all three texts being authentic In case of divergent interpretations of the German and Hebrew texts, the English text shall prevail.

For the Federal Republic of Germany
Genscher

For the State of Israel
Yigal Allon

Protocol

On signing the Treaty concerning the Encouragement and Reciprocal Protection of Investments, concluded between the federal Republic of Germany and the State of Israel, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Treaty:

(1) Ad Article 1

(a) The expression 'document of admission' shall mean a document by which the State of Israel admits into its territory for the purposes of the Treaty an investment by a national or company of the Federal Republic of Germany.

The admission of an investment as aforesaid shall be dealt with irrespective of whether or not the investment concerned is eligible for the incentives for the promotion of investments in the State of Israel.

(b) Returns from the investment, and, in the event of their re-investment in the same enterprise, the returns there from, shall enjoy the same protection as the investment.

(c) Without prejudice to any other method of determining nationality, in particular any person in possession of a 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 act exclusively, be deemed 'activity' within the meaning of paragraph 2 of Article 3: the management, maintenance, use, and enjoyment of an investment. The following shall, in particular, be deemed 'treatment less favourable'

within the meaning of paragraph 2 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, if directed in a discriminatory way against nationals or companies of the other Contracting Party. 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) With regard to paragraph 2 of Article 3, matters of taxation shall be governed by the agreements between the Contracting Parties- for the avoidance of double taxation.

(c) The Contracting Parties shall within the framework of their national laws and regulations 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 connexion with the making and carrying through of an investment; the same shall apply to nationals of either Contracting Party who in connexion with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(3) Ad Article 4

The provisions of paragraph 2 of Article 4 shall also apply to any measure of expropriation or nationalization, either direct or indirect, against investments made by nationals or companies of the other Contracting Party. Expropriation shall mean the taking away of any property right which in itself or in conjunction with other rights constitutes an investment.

(4) Ad Article 7

A transfer shall be deemed to have been made 'without delay' within the meaning of paragraph 1 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 on which the relevant request has been properly submitted and may on no account exceed two months.

(5) Ad Article 9

In respect of the State of Israel, Article 9 shall apply to a document of admission being granted by the State of Israel following an application made after the signature of the Treaty.

(6) Whenever goods or persons connected with the making of investments are to be transported, each Contracting Party shall act in accordance with the relevant agreements between the two Contracting Parties.

DONE at Bonn on 24 June 1976 in duplicate in the German, Hebrew and English languages, all three texts being authentic. In case of divergent interpretations of the German and Hebrew texts, the English text shall prevail.

For the Federal Republic of Germany Genscher

For the State of Israel Yigal Allon