

[TRANSLATION - TRADUCTION]

TREATY BETWEEN THE THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF TURKMENISTAN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Germany and Turkmenistan,
Desiring to intensify economic cooperation between the two Contracting States,
Endeavouring to create favourable conditions for investments by nationals or companies of one Contracting State in the territory of the other Contracting State,
Recognizing that the encouragement of such investments and their protection on the basis of a treaty will foster the development of private economic initiatives and improve the prosperity of both peoples,
Have agreed as follows:

Article 1

For the purposes of this Treaty

1. The term "investments" shall comprise all kinds of assets, 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 company interests;
 - (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, patents, utility models, commercial designs and models, trade marks, trade names, trade and company secrets, technical processes, know-how and goodwill;
 - (e) Business concessions under public law, including prospecting and exploiting concessions;

Any alteration of the form in which assets are invested shall not affect their classification as an investment;
2. The term "returns" shall mean the amounts yielded from an investment for a definite period, such as profits, dividends, interest, and licence or other fees;
3. The term "national" shall mean
 - (a) In reference to the Federal Republic of Germany: German, as defined by the Basic Law of the Federal Republic of Germany;
 - (b) In reference to Turkmenistan: a natural person who is a national of Turkmenistan in accordance with the law in force on the nationality of Turkmenistan;
4. The term "companies" shall mean

(a) In reference to the Federal Republic of Germany: juridical persons as well as commercial or other companies or associations with or without legal personality having their seat in the Federal Republic of Germany, irrespective of whether or not their activities are directed at profit;

(b) In reference to Turkmenistan: any juridical person or cooperative society or other company or association with legal personality which has been established in accordance with Turkmenistan's legislation and has its seat in the territory of Turkmenistan.

Article 2

1. Each Contracting State shall in its territory promote as far as possible investments by nationals or companies of the other Contracting State and admit such investments in accordance with its respective laws. It shall in every case accord investments fair and equitable treatment.

2. Neither Contracting State shall in any way impede the management, maintenance, use or enjoyment of investments in its territory by nationals or companies of the other Contracting State through arbitrary or discriminatory measures.

Article 3

1. Neither Contracting State shall treat investments in its territory owned by nationals or companies of the other Contracting State less favourably than it treats investments of its own nationals or companies, or investments of nationals or companies of any third State.

2. Neither Contracting State shall treat nationals or companies of the other Contracting State as regards their activity in connection with investments in its territory less favourably than it treats its own nationals or companies, or nationals or companies of any third State.

3. Such treatment shall not refer to privileges which either Contracting State accords to nationals or companies 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 refer to privileges granted by either Contracting State to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4

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

2. Investments by nationals or companies of either Contracting State shall not 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 shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall, until such

time as payment is made, earn interest at the normal rate of bank interest; it shall be effectively realizable and freely transferable. Appropriate precautions shall be taken to determine the amount of and procedure for payment of the compensation no later than the date on which the expropriation, nationalization or comparable measure is carried out. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

3. Nationals or companies of either Contracting State who suffer losses on their investments owing to war or other armed conflict, revolution, a state of national emergency, or revolt in the territory of the other Contracting State shall be accorded treatment no less favourable by such other Contracting State than that State 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 State shall enjoy most favoured treatment in the territory of the other Contracting State in respect of the matters dealt with in this article.

Article 5

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

- (a) Of the capital and additional amounts which are necessary to maintain or increase the investment;
- (b) Of the returns;
- (c) In repayment of loans;
- (d) Of the proceeds from the liquidation or sale of the whole or any part of the investment;
- (e) Of the compensation provided for in article 4.

Article 6

If either Contracting State makes payments to any of its nationals or companies under a guarantee that 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 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of all rights or claims from such national or company to the former Contracting State. The latter Contracting State shall further recognize the subrogation of the former Contracting State to all such rights or claims (assigned rights or claims), which the former Contracting State shall be entitled to exercise to the same extent as its legal predecessor. As regards the transfer of payments by virtue of such assigned claims, article 4, paragraphs 2 and 3, and article 5 shall apply *mutatis mutandis*.

Article 7

1. A transfer under article 4 paragraphs 2 or 3, or under article 5 or article 6 shall be made without delay at the exchange rate in effect on the day of the transfer.

2. Such exchange rate must correspond to the cross rate determined on the basis of the conversion rates underlying the International Monetary Fund's special drawing rates conversions for the currencies concerned on the day on which the transfers take place.

Article 8

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

2. Each Contracting State shall observe any other obligation that it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting State.

Article 9

This Treaty shall also apply to investments made by nationals or companies of either Contracting State in the territory of the other Contracting State, in accordance with the legislation of the latter, before the entry into force of this Treaty.

Article 10

1. Disputes between the Contracting States concerning the interpretation or application of this Treaty shall, if possible, be settled by the Governments of the two Contracting States.

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

3. Such arbitral tribunal shall be constituted for each individual 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. 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 that it wishes 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 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 such function, the Vice-President shall make the necessary appointments. If the Vice-President

is also a national of either Contracting State or if he, too, is prevented from discharging the said function, the next highest ranking member of the International Court of Justice who is not a national of either Contracting State shall make the necessary appointments.

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

6. If both Contracting States are also Contracting States to 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 article 27, paragraph 1, of the said Convention not be appealed to insofar as agreement has been reached between the national or company of one Contracting State and the other Contracting State, 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 is not complied with (article 27) 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

1. Disputes with regard to investments between either Contracting State and a national or company of the other Contracting State shall, as far as possible, be settled amicably between the parties to the dispute.

2. If a dispute cannot be settled within six months after it has been raised by one of the parties to the dispute, the dispute shall, at the request of a national or company of the other Contracting State, be subjected to arbitral proceedings. If the parties to the dispute do not make a different arrangement, the dispute shall be subjected to arbitral proceedings under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

3. The arbitral award shall be binding and shall not be subject to any legal appeal or other legal remedy other than those provided for in the said Convention. It shall be enforced in accordance with national legislation.

4. Neither Contracting State that is a party to the dispute shall raise the objection during arbitral proceedings or during the enforcement of an arbitral award that the national or company of the other Contracting State has received compensation under an insurance policy for part or all of the damage.

Article 12

This Treaty shall apply irrespective of whether or not diplomatic or consular relations exist between the two Contracting States.

Article 13

The attached protocol shall be an integral part of this Treaty.

Article 14

1. This Treaty shall be ratified, the instruments of ratification shall be exchanged as soon as possible.

2. This 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 10 years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting State 12 months before its expiration. After the expiry of the period of 10 years, this Treaty may be denounced at any time giving 12 months notice.

3. In respect of investments made prior to the date of termination of this Treaty, articles 1-13 shall continue to be effective for a further period of 15 years from the date of termination of this Treaty.

Done at Bonn on 28 August 1997, in duplicate, in the German, Turkmen and Russian languages, each text being equally authentic. In case of any divergence of interpretation between the German and Turkmen texts, the Russian text shall prevail.

For the Federal Republic of Germany:

For Turkmenistan:

PROTOCOL TO THE TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND TURKMENISTAN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

On signing the Treaty between the Federal Republic of Germany and Turkmenistan concerning the Encouragement and Reciprocal Protection of Investments, the duly authorized plenipotentiaries for this purpose have reached agreement in addition on the following provisions, which shall be regarded as an integral part of the said Treaty.

(1) Ad article 1

(a) Returns from the investment and, in the event of their reinvestment, also the returns therefrom, shall enjoy the same protection as the investment.

(b) Irrespective of other procedures undertaken to establish nationality, a national of a Contracting State shall be defined in particular by the possession of a passport issued by the competent authorities of such Contracting State.

(2) Ad article 2

(a) Investments made in accordance with the legislation of either Contracting State in its territory by nationals or companies of the other Contracting State shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the territories of the exclusive economic zone and the continental shelf, insofar as international law permits the Contracting State concerned to exercise sovereign rights or powers in such territories.

(3) Ad article 3

(a) The term "activity" within the meaning of article 3, paragraph 2, shall refer in particular, but not exclusively, to the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of article 3: different treatment restricting the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, different treatment impeding the marketing of products in domestic or foreign markets, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, or for the protection of life and health or public morality, shall not be deemed "treatment less favourable" within the meaning of article 3.

(b) The provisions of article 3 do not oblige a Contracting State to extend to natural persons or companies 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 natural persons and companies resident in its territory.

(c) The Contracting States shall, within the framework of their national legislation, give favourable 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 employees of either Contracting State who, in connection with an investment, wish to enter the territory of the other Contracting State and remain there in order to take up employment. Applications for work permits shall also be given favourable consideration.

(4) Ad article 4

A claim for compensation also arises in the event that the company that is the object of the investment is subject to State intervention and its economic value is thereby significantly impaired.

(5) Ad article 7

A transfer shall be deemed to have been made "without delay" within the meaning of article 7, paragraph 1, 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 a request has been submitted, in full and in due form, and may on no account exceed two months.

(6) Whenever goods or persons connected with the investment are to be transported, one Contracting State shall neither exclude nor hinder transport enterprises of the other Contracting State and shall issue permits as required to carry out such transport. This shall relate to the transport of:

(a) Goods that are directly intended for investment within the meaning of this Treaty or those which in the territory of a Contracting State or any third State are purchased or ordered by a company in which assets are invested within the meaning of this Treaty.

(b) Persons travelling in connection with an investment.