Germany - Honduras BIT (1995)

Treaty between the Federal Republic of Germany and the Republic of Honduras on the Promotion and Reciprocal Protection of Capital Investments

Preamble

The Federal Republic of Germany and the Republic of Honduras -

Desiring to deepen economic cooperation between the two countries;

Seeking to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State;

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

Article 1.

For the purposes of this Treaty

1. the term "investments" includes assets of any kind, in particular but not exclusively

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;

b) Shares, rights in companies and other types of participations in companies;

c) Claims on money used to create an economic value or claims on an economic value;

d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;

e) Public-law concessions, including concession and concession concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Republic of Honduras:

Hondurans within the meaning of the applicable laws of the Republic of Honduras;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the territory of the Federal Republic of Germany, whether or not its activity is directed at profit,

b) As regards the Republic of Honduras:

Any legal person in accordance with the applicable laws of the Republic of Honduras.

Article 2.

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

Article 3.

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

Article 4.

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

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation shall be paid forthwith and bear interest until the time of payment at the usual bank rate of the country in which the expropriation took place; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments by war or other armed conflicts, revolution, national or truce in the territory of the other Contracting Party shall be treated no less favorably by the Contracting Party in respect of repayments, settlements, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

Article 5.

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

a) Of the capital and additional amounts for the maintenance or expansion of the investment;

b) Of income;

c) To repay loans;

d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

Article 6.

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of such nationals or companies by law or by reason of the rights of the former Contracting Party To the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

Article 7.

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the officially recognized market price in freely convertible currency.

(2) This rate must correspond to the cross-rate, which is derived from the exchange rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

Article 8.

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

Article 9.

This contract shall also apply to investments carried out by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory, even before the entry into force of this Treaty, if they still exist upon the entry into force of the Treaty.

Article 10.

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

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the vice-president also has the nationality of one of the two contracting parties or if he is also prevented from doing so, the next member of the Court who is not a national of one of the two contracting parties shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are also signatory States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of the Convention may not be applied to the above-mentioned arbitration as between the nationals Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

Article 11.

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. The Contracting Parties agree to this procedure. Unless the parties to the dispute reach a dissenting agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the said Convention. It is enforced under national law.

(4) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

Article 12.

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

Article 13.

(1) This Treaty shall be subject to ratification; The instruments of ratification will be exchanged as soon as possible in Tegucigalpa.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at Bonn, March 21, 1995, in two originals, each in the German and Spanish languages, each text being equally authentic.

For the Federal Republic of Germany

Helmut Schäfer

For the Republic of Honduras

Carlos Roberto Reina

Protocol

At the signing of the Treaty between the Federal Republic of Germany and the Republic of Honduras on the Promotion and Reciprocal Protection of Capital Investments, the undersigned plenipotentiaries have further adopted the following provisions,

which shall be considered as an integral part of the Treaty:

(1) Ad Article 1

(a) The income from a capital investment, and in the case of its reinvestment also the income therefrom, shall enjoy the same protection as the investment itself.

(b) Without prejudice to other procedures for determining nationality, any person holding a National Passport issued by the competent authorities of the respective Contracting Party shall be considered in particular as a national of a Contracting Party.

(2) Ad Article 2

(a) Capital investments which, in accordance with the legal provisions of one of the Contracting Parties, have been made in the territory of that Contracting Party by nationals or companies of the other Contracting Party, shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf in so far as international law grants to the respective Contracting Party the exercise of sovereign rights or jurisdiction in these areas.

(3) Ad Article 3

(a) As "activities" within the meaning of paragraph 2 of Article 3 shall be considered especially but not exclusively the administration, utilization, use and development of a capital investment. The following, in particular, shall be considered as "less favorable treatment" within the meaning of Article 3: "unequal treatment in the case of limitations on the acquisition of raw and auxiliary materials, energy and fuels, as well as means of production and exploitation of all kinds, unequal treatment in the case of hindrance of the sale of products within the country and abroad, and any measures having similar effects.

Measures taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable treatment" within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend tax advantages, exemptions and reductions which under its tax laws are granted only to individuals and corporations resident in its territory to individuals and corporations resident in the territory of the other Contracting Party.

c) The Contracting Parties, in accordance with their internal legal provisions, shall deal with the immigration and residence applications of persons of one Contracting Party who, in connection with a capital investment, wish to enter the territory of the other Contracting Party; the same rule shall apply to employees of one Contracting Party who, in connection with a capital investment, wish to enter and reside in the territory of the other Contracting Party in order to carry on their activity as employees. Likewise, applications for work permits shall be dealt with kindly.

(4) Ad Article 4

The right to compensation shall also apply in the event of intervention by means of state measures in the enterprise which is the object of the investment, and as a result of which the economic substance of the enterprise is considerably impaired.

(5) Ad Article 7

A transfer shall be deemed to have been effected "without delay" within the meaning of paragraph 1 of Article 7 if it has been effected within the period of time normally required for the completion of the transfer formalities. The time limit, which may in no case exceed two months, shall commence to run at the moment of delivery of the corresponding request, duly formalized.

(6) With respect to the transport of goods and persons in connection with capital investments, neither Contracting Party shall exclude or hinder transport undertakings of the other Contracting Party and, if necessary, grant authorizations for the performance of the transports. This shall include the carriage of:

(a) goods intended directly for an investment of capital within the meaning of the Treaty, or acquired in the territory of a Contracting Party or of a third State by an enterprise or on behalf of an enterprise in which capital is invested within the meaning of the Treaty;

(b) Persons traveling in connection with an investment of capital.

Done at Bonn, this 21st day of March 1995, in duplicate, in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany Helmut Schäfer For the Republic of Honduras Carlos Roberto Reina

© 2024 EDIT | Disclaimer | Conditions of Use | Data Protection Policy