

[TRANSLATION – TRADUCTION]

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

The Federal Republic of Germany and the Republic of Angola,

Desiring to intensify economic cooperation between the two States,

Intending to create favourable conditions for investments by investors of either State
in the territory of the other State,

Recognising that the encouragement and legal protection of such investments are
likely to stimulate private business initiative and to increase the prosperity of both na-
tions,

Have agreed as follows:

Article 1. Interpretation

For the purposes of this Treaty:

1. The term “investor” comprises,

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

- Germans within the meaning of the Basic Law of the Federal Republic of
Germany;

- any juridical person as well as any commercial or other company or associa-
tion with or without legal personality having its seat in the territory of the Federal
Republic of Germany, irrespective of whether or not its activities are directed at
profit;

(b) in respect of the Republic of Angola:

- any natural persons deriving their status as nationals of the Republic of Angola
from the laws in force in Angola, who have invested in the territory of the Federal
Republic of Germany;

- any juridical persons incorporated under the laws in force in the Republic of
Angola and investing in the territory of the Federal Republic of Germany;

2. The term "capital investments" comprises every kind of investment made by an
investor in one of the Contracting Parties in the territory of the other Contracting Party in
accordance with the latter's laws and other regulations, in particular but not exclusively:

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

(b) shares in companies and other kinds of interests in companies;

(c) claims to money used to generate an economic value or to any performance
under contract having an economic value;

(d) intellectual property rights such as copyrights, patents, utility models, industrial designs, trade marks, trade names, trade and business secrets, technical processes, know-how, and goodwill;

(e) business concessions under public law, including rights to search for, extract and exploit natural resources;

and any alteration of the form in which assets are invested shall not affect their classification as investments;

3. The term "returns" means the amounts yielded by an investment such as profit, dividends, interest, royalties or other fees;

4. The term "territory" means the territory of a Contracting Party, including the exclusive economic zone and continental shelf, insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

Article 2. Scope of application

The provisions of this Treaty shall apply to all capital investments, undertaken before or after its entry into force, but not to differences of opinion arising prior to its entry into force.

Article 3. Promotion and Protection of Investments

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

(2) Investments by investors of a Contracting Party shall in any case be accorded fair and equitable treatment in the territory of the other Contracting Party.

(3) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

(4) The Contracting Parties shall, within the framework of their national legislation, 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 connection with an investment; the same shall apply to employed persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment and to remain there in order to take up employment. Applications for work permits shall likewise be given sympathetic consideration.

(5) Whenever goods or persons connected with an investment are to be transported, a Contracting Party shall neither exclude nor hinder the transport enterprises of the other Contracting Party and shall issue permits as required to carry out the transport.

Article 4. National treatment and most favoured nation treatment

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

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

(3) The provisions of paragraphs (1) and (2) above shall not oblige a Contracting Party to grant investors of the other Contracting Party privileges on account of:

(a) its membership of, or association with, a customs or economic union or a common market or free trade area, or similar international economic cooperation agreement;

(b) a double taxation agreement or any other agreement regarding matters of taxation.

(4) The following shall, in particular, be deemed "treatment less favourable" within the meaning of this article: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures necessary for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of this article.

(5) The provisions of this article shall not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

Article 5. Expropriation and compensation

(1) Investments by investors of either Contracting Party and the returns thereon shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party shall not be expropriated, nationalised or subjected to any other measure the effect of which would be tantamount to expropriation or nationalisation in the territory of the other Contracting Party except for a public purpose with compensation.

Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalisation or other comparable measure becomes publicly known. Such compensation shall be paid without delay, shall carry the usual commercial interest until the date of payment and shall be effectively realisable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalisation, or other comparable measure for the determination and payment, of such compensation. The investor shall be entitled to have the legality of any such expropriation, nationalisation or other comparable measure and the amount of such compensation reviewed, in accordance with the principles of international law, by the competent court of the Contracting Party in whose territory the investment was carried out.

(3) Investors 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 which the latter Contracting Party accords to its own investors, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors 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 this article.

Article 6. Transfer of Funds

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, once tax obligations have been met, the free transfer of payments in connection with an investment, in particular payments:

- (a) of the principal and additional amounts 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 5.

(2) Transfers under paragraph 1 shall be made without delay at the market rate of exchange applicable on the date of transfer, in accordance with the foreign exchange laws in effect in the Contracting Party, in whose territory the investment was made.

(3) If there is no foreign exchange market, the cross rate shall apply, which is derived from those rates which would be applied by the International Monetary Fund on the date of payment for conversion of the currencies concerned into Special Drawing Rights.

(4) A transfer shall be deemed to have been made "without delay" within the meaning of this article if it is 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 submitted and may on no account exceed two months.

Article 7. Subrogation

If a Contracting Party makes a payment to its investors under a guarantee which it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognise the assignment, whether by operation of law or pursuant to a legal transaction, of any right or claim of those investors to the former Contracting Party. The latter Contracting Party shall also recognise the subrogation of the former Contracting Party to any such assigned right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. Articles 5, paragraphs 2 and 3, and 6 shall, *mutatis mutandis*, apply to the transfer of payments by virtue of the assigned claims.

Article 8. Disputes between the Contracting Parties

(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 dispute cannot thus be settled within six months, 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 notified the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If the necessary appointments have not been made within the periods specified in paragraph (3) above, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party 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 Party shall be invited to make the necessary appointments.

(5) The President of the arbitral tribunal must be a national of a State with which both Contracting Parties have diplomatic relations.

(6) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding.

(7) Each Contracting Party shall bear the cost of its own member and of its representatives at the arbitration 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 decision concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 9. Disputes between a Contracting Party and an investor of the other Contracting Party

(1) Disputes between a Contracting Party and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties to the dispute.

(2) If the dispute referred to in paragraph 1 is not settled within six months of the date when it is raised by one of the Parties in dispute, the investor concerned may submit the dispute to:

(a) The competent courts of the Contracting Party in whose territory the investment was made;

(b) An ad-hoc arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

(c) The International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18 March, 1965, provided both Contracting Parties are parties to that Convention;

(d) The Centre, in accordance with the rules of the “Additional facility for the administering of dispute proceedings by the Secretariat of the Centre”, provided at least one of the Contracting Parties is party to the Convention referred to in preceding subparagraph c.

(3) If an investor of the Federal Republic of Germany has appealed to a domestic court of the Republic of Angola, a dispute may be brought before an international arbitral tribunal only if the domestic Angolan court has not ruled on the case.

(4) An investor of the Republic of Angola, whose investment has been carried out in the Federal Republic of Germany, may appeal to an international arbitral tribunal before or after a ruling on the dispute by a German court.

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

(6) Neither Contracting Party shall, in respect of a dispute that one of its investors or the other Contracting Party wish to submit, or have already submitted, to arbitration proceedings according to the Convention mentioned in paragraph 2.c, grant diplomatic protection or assert a clam under international law, unless the other Contracting Party fails to comply with the arbitration decision on the dispute.

(7) Informal diplomatic moves that are merely designed to facilitate the settlement of a dispute shall not be construed as diplomatic protection in the sense of paragraph 6.

(8) The award shall be binding on the parties and shall not be subject to any appeal or remedy other than that provided for in the Convention referred to in paragraph 2 of this article. The award shall be enforced in accordance with the domestic law of the Contracting Party in the territory of which the investment in question is situated.

Article 10. Other regulations

(1) If the laws of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a provision, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provision shall to the extent that it is more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Consultation

The Contracting Parties shall, where necessary, consult each other on matters relating to the implementation of this Treaty.

Article 12. Entry into Force, Duration and Termination of this Treaty

(1) This Treaty requires ratification. The instruments of ratification shall be exchanged as soon as possible.

(2) This Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an indefinite period unless denounced in writing by either Contracting Party, through the diplomatic channel, twelve months before its expiration. After the expiry of the period of ten years, this Agreement may be denounced at any time by either Contracting Party giving twelve months written notice, through the diplomatic channel, to the other Contracting Party.

(3) In respect of investments made prior to the date of termination of this Agreement, the provisions of the foregoing articles shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.

(4) This Agreement shall remain in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties in accordance with Article 63 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Done at Luanda on 30 October, 2003 in two originals in the English and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany:

KLAUS-CHRISTIAN KRAEMER

KARL-ERNST BRAUNER

For the Republic of Angola:

FRANCISCO ROMAO DE OLIVEIRA E SILVA