

GOVERNMENT RESOLUTION No. 8/2011

of 16 March 2011

APPROVAL OF THE AGREEMENT BETWEEN

THE FEDERAL REPUBLIC OF GERMANY

AND

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

ON THE PROMOTION AND RECIPROCAL

PROTECTION OF INVESTMENTS AND PROTOCOL TO THE AGREEMENT

Considering the importance of intensifying economic cooperation between the two States;

Desiring to create favorable conditions for investment by investors of one State in the territory of the other State;

Recognizing that the promotion and protection of such investments through an Agreement and Protocol can serve to stimulate private economic initiative and enhance the well-being of both peoples;

Accordingly,

The Government hereby resolves the following under the terms of Article 115(1)(f) and Article 116(d) of the Constitution of the Democratic Republic of Timor-Leste:

To approve the Agreement between the Federal Republic of Germany and the Democratic Republic of Timor-Leste on the Promotion and Reciprocal Protection of Investments and the respective Protocol, contained in Annexes I and II of this Act and of which they form an integral part.

Approved by the Council of Ministers on September 8, 2010.

Be it published.

The Prime Minister,

Kay Rala Xanana Gusmão

**AGREEMENT BETWEEN
THE FEDERAL REPUBLIC OF GERMANY
AND
THE DEMOCRATIC REPUBLIC OF EAST TIMOR
ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Federal Republic of Germany and the Democratic Republic of East Timor - encouraged by the desire to intensify economic cooperation between the two States, wishing to create favorable conditions for investments by investors of one State in the territory of the other State, recognizing that the promotion and protection of such investments by means of an Agreement may serve to stimulate private economic initiative and increase the well-being of both peoples

Have agreed as follows:

Article 1

For the purposes of this Agreement

(1) The term 'investments' includes assets of all kinds, in particular:

- a) ownership of movable and immovable property and other rights in rem, such as mortgages and rights of attachment;
- b) shares in companies and other forms of corporate ownership;
- c) pecuniary rights arising from investments which have generated economic value or rights to services with economic value;
- d) intellectual property rights, including copyrights, patents, registered designs, industrial designs, trademarks, trade names, industrial and commercial secrets, technological processes, know-how and good will;
- e) public law concessions, including concessions for prospecting, extraction and exploitation of natural resources; a change in the way assets are applied shall not affect their classification as investments;

(2) The term "income" means the amounts generated by an investment over a given period of time, such as profit-sharing, dividends, interest, royalties or other forms of remuneration;

(3) The term "investor" means:

- a) as regards the Federal Republic of Germany:
 - legal persons as well as commercial companies or other companies or associations with or without legal personality which have their registered office in the Federal Republic of Germany, irrespective of whether or not they pursue a profit-making activity;
- b) in respect of the Democratic Republic of Timor-Leste:
 - natural persons who, according to the laws of that country, have the nationality of the Democratic Republic of East Timor,
 - legal entities incorporated under the laws of the Democratic Republic of Timor-Leste.

Article 2

- (1) Each Contracting State shall, to the extent possible, promote within its territory the making of investments by investors of the other Contracting State and shall authorize them in accordance with existing legal provisions.
- (2) Investments made by investors of one Contracting State in the territory of the other Contracting State shall, in each case, be accorded fair and equitable treatment and full protection in accordance with this Agreement.
- (3) None of the Contracting States shall, by arbitrary or discriminatory measures, impede in any way the management, preservation, use, enjoyment or disposition of the investments of investors of the other Contracting State in its territory.

Article 3

- (1) Each Contracting State shall accord to investments owned or promoted by investors of the other Contracting State in its territory a treatment no less favorable than that accorded to investments of its own investors or of investors of third States.
- (2) Each Contracting State shall accord to investors of the other Contracting State, in respect of activities arising from investments made within its territory, a treatment no less favorable than that accorded to its own investors or to investors of third States.
- (3) This treatment does not refer to privileges granted by a Contracting State to investors from third States in their capacity as members or associates of a customs or economic union, a common market or a free trade area.
- (4) The treatment guaranteed by this Article does not relate to benefits granted by a Contracting State to investors from third States on the basis of a double taxation agreement or other tax arrangements.

Article 4

- (1) Investments by investors of one Contracting State shall enjoy in the territory of the other Contracting State full protection and security.
- (2) In the territory of each of the Contracting States, investments by investors of the other Contracting State may be directly or indirectly expropriated, nationalized or subject to other measures having equivalent effect to expropriation or nationalization only for reasons of public utility and against compensation. Compensation should correspond to the value of the expropriated investment immediately before the date on which the intention or execution of the expropriation or nationalization or any other measure having equivalent effect became public. The compensation shall be paid without delay and shall bear interest at the usual bank rate until the date of its settlement; it shall be effectively realizable and freely transferable. At the latest, at the time of expropriation, nationalization or any other measure having equivalent effect, appropriate steps shall be taken to fix the amount of the compensation and its payment. The legal nature of the expropriation, nationalization or equivalent measure and the amount of compensation should be capable of being verified in ordinary legal proceedings.
- (3) Investors in one Contracting State who suffer investment losses in the territory of the other Contracting State caused by war or other armed conflict, revolution, national emergency or insurgency shall not receive from that Contracting State less favorable treatment with regard to restitution, compensation, indemnity or other consideration than that accorded to their own investors. Such payments shall be freely transferable.

- (4) In respect to matters governed by this Article, investors of one Contracting State shall enjoy most-favored-nation treatment in the territory of the other Contracting State.

Article 5

Each Contracting State shall ensure to investors of the other Contracting State the free transfer of payments related to an investment, inter alia:

- (a) the capital and additional amounts necessary to maintain or extend the investment;
- (b) the income;
- (c) repayment of loans;
- (d) proceeds from the liquidation or disposal of all or part of the investment;
- (e) the compensation provided for in Article 4.

Article 6

If one of the Contracting States makes payments to its investors in respect of a guarantee assumed for an investment in the territory of the other Contracting State, that other Contracting State, without prejudice to the rights of the first Contracting State under Article 10, shall recognize the transfer of all rights or claims of those investors to the first Contracting State, either by operation of law or by legal act. In addition, the other Contracting State shall recognize the first Contracting State as subrogated to all such rights or claims (transferred rights) and the first Contracting State may exercise them to the same extent as the original holder. The provisions of Article 4, paragraphs 2 and 3, as well as those of Article 5, shall apply by analogy to the transfer of amounts arising from the rights transferred.

Article 7

- (1) Transfers under Article 4(2) or (3), Article 5 or Article 6 shall be made without delay at the official market rate on the day of transfer.
- (2) In the absence of a foreign exchange market, the cross rate resulting from the exchange rates which the International Monetary Fund would take on the basis of the date of conversion of the respective currencies into special drawing rights shall be applied.

Article 8

- (1) If legal provisions of one of the Contracting States or obligations under international law which exist or will exist in the future between the Contracting States in addition to this Agreement result in general or specific regulations providing for more favorable treatment of the investments of investors of the other Contracting State than that laid down in this Agreement, these regulations shall take precedence over this Agreement to the extent that they are more favorable.
- (2) Each Contracting State shall perform all other obligations undertaken in relation to investments by investors of the other Contracting State on its territory.

Article 9

This Agreement shall also apply to investments which investors from one Contracting State made in accordance with the legal provisions of the other Contracting State on the territory of that Contracting State already before the entry into force of this Agreement.

Article 10

- (1) Disputes arising between Contracting States concerning the interpretation or application of this Agreement should be settled to the extent possible by the Governments of both Contracting States.

- (2) If a dispute cannot be settled by this means, it shall, at the request of either Contracting State, be submitted to an arbitration tribunal.
- (3) The arbitration tribunal shall be ad hoc, with each Contracting State appointing one member and both members selecting by common accord a national of a third State as its chairperson, who shall be appointed by the Governments of both Contracting States. The members shall be appointed within two months and the Chairman within three months from the date on which one of the Contracting States has notified the other that it wishes to submit the dispute to an arbitration tribunal.
- (4) In the event of failure to comply with the time limits provided for in paragraph 3, each Contracting State may, in the absence of another adjustment, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the Contracting States or is otherwise indisposed, the Vice President shall make the appointments. If the Vice President is also a national of one of the Contracting States or is prevented from attending, the appointments shall be made by the next member in the hierarchy of the Court who is not a national of one of the Contracting States.
- (5) The arbitral tribunal shall decide by majority vote. Its decisions shall be binding. Each Contracting State shall bear the costs of its member and his replacement during the proceedings before the arbitral tribunal; both Contracting States shall bear the costs of the President and the miscellaneous costs in equal shares. The arbitral tribunal may adopt an alternative arrangement regarding costs. In addition, the arbitral tribunal shall determine its own rules of procedures.

Article 11

- (1) Disputes concerning investments which have arisen between one of the Contracting States and an investor of the other Contracting State should, as far as possible, be settled amicably between the litigants.
- (2) If a dispute cannot be settled within a period of six months from the date on which one of the litigants has expressed its views, it shall, at the request of the investor of the other Contracting State, be referred to an arbitration tribunal. To the extent that the litigant parties cannot reach another agreement, the dispute shall be submitted to arbitration under the Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States.
- (3) The arbitration award shall be binding and shall be subject only to the appeals or other legal proceedings provided for by that Convention. The execution shall be in accordance with national law.
- (4) During the arbitration proceedings or the enforcement of the arbitral award, the Contracting State involved in the dispute may not object to the fact that the investor from the other Contracting State has received insurance compensation for some or all of the loss.

Article 12

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

Article 13

The attached Protocol shall form an integral part of this Agreement.

Article 14

- (1) This Agreement needs ratification; the instruments of ratification should be exchanged as soon as possible.
- (2) This Agreement shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for a period of ten years, after which it shall be extended for an indefinite period of time, unless one of the two Contracting States denounces it by giving twelve months' written notice through diplomatic channels. Upon expiry of the ten-year period, the Agreement may be terminated at any time twelve months in advance by each of the Contracting States.
- (3) For investments made until the expiration of this Agreement, the provisions of the preceding Articles shall remain in force for a further twenty years from the date of expiration of the Agreement.

Done at Berlin on the 10th day of August 2005 in two originals, each in the German, Portuguese and English languages, all three texts being equally authentic. In case of divergent interpretation of the German and Portuguese texts, the English version of the text shall prevail.

For the Federal Republic of Germany
Georg Boomgaarden

For the Democratic Republic of Timor-Leste
J. Ramos-Horta

**PROTOCOL TO THE AGREEMENT BETWEEN THE
FEDERAL REPUBLIC OF GERMANY
AND THE
DEMOCRATIC REPUBLIC OF TIMOR-LESTE
ON THE RECIPROCAL INVESTMENT PROMOTION AND PROTECTION**

The Federal Republic of Germany and the Democratic Republic of Timor-Leste have agreed the following additional provisions to the Agreement of 10 August 2005 on the Reciprocal Investment Promotion and Protection:

1. With regard to Article 1

- (a) Investment income and, in the case of reinvestment, also income from reinvestment, will enjoy the same protection as investments.
- b) Without prejudice to other procedures for establishing nationality, a person who holds a national passport issued by the competent authorities of the respective Contracting State shall, in particular, be considered a citizen of a Contracting State.

2. With regard to Article 2

The Agreement shall extend to the territories of the exclusive economic zone and the continental shelf in so far as international law permits the respective Contracting State to exercise sovereign rights or sovereign powers in these territories.

3. With respect to Article 3

- (a) "activities" as defined in Article 3, paragraph 2, means, in particular but not exclusively, the management, preservation, use, enjoyment and disposal of an investment. "Less favorable" treatment under Article 3 means in particular: unequal treatment in the case of limitations on the purchase of raw and auxiliary materials, energy and fuel, as well as productive and operational means of all kinds, unequal treatment in the case of impediments to the sale of products within and outside the country, as well as other measures with similar effect. Measures to be taken for reasons of public security and public order, public health or morality shall not be regarded as "less favorable" treatment under Article 3.
- b) Article 3 shall not oblige a Contracting State to extend tax benefits, exemptions and reductions, granted in accordance with its tax laws only to investors domiciled within its territory, to investors domiciled in the territory of the other Contracting State.
- c) Contracting States shall consider favorably under their domestic laws applications for entry and residence by persons from one of the Contracting States who apply to enter the territory of the other Contracting State for reasons connected with an investment; the same shall apply to workers from one of the Contracting States who enter the territory of the other Contracting State and who wish to remain there to pursue an activity as workers. Applications to obtain a work permit shall also be considered benevolently.

4. With respect to Article 7

A transfer executed within the time normally necessary to complete the formalities of the transfer shall be considered as executed "without delay" in accordance with Article 7(1). The time limit shall start to run from the submission of the relevant request and shall in no case exceed two months.

5. Where goods or persons are carried for reasons connected with an investment, the Contracting State shall not exclude or prevent transport undertakings of the other Contracting State by granting, where appropriate, authorizations to carry out the transport. Transport from and to the other Contracting State shall be covered the transport of:
- a) goods intended for investment pursuant to the Agreement or acquired on the territory of one of the Contracting States or a third State by an undertaking or at the request of an undertaking in which assets are invested pursuant to the Agreement;
 - b) persons, travelling for reasons connected with an investment.