

# Agreement between the Federal Republic of Germany and the Republic of Panama on Reciprocal Encouragement and Protection of Capital Investments

The Federal Republic of Germany and the Republic of Panama -

In the desire 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 that the promotion and the contractual protection of these investments are appropriate to stimulate private economic initiatives and to increase the prosperity of the two peoples

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

1. The term "investments" means assets of any kind which have been invested in accordance with the legislation of the host country, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Copyright, industrial property rights, technical procedures, trademarks, trade names, 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 which are attributable to an investment for a certain period of time as profit shares, dividends, interest, royalties or other fees;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) With regard to the Republic of Panama:

Natural persons who are nationals according to their laws;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person or any commercial or other company or association with or without legal personality having its seat in the German area of application of this contract and which is lawful according to the law whether or not the liability of its members, members or members is restricted or unlimited and whether its activity is aimed at profit or not;

b) With regard to the Republic of Panama:

All legal entities established in accordance with the laws in force in Panama, as well as companies and associations with or without legal personality established in the territory of the Republic of Panama, with the exception of state-owned enterprises.

## **Article 2.**

Each Contracting Party shall, in accordance with its legislation in force, permit and, if possible, promote investments of nationals or companies of the other Contracting Parties in its territory. It will in any case treat these investments fairly and cheaply.

## **Article 3.**

(1) Each Contracting Party shall, in its territory, not subject the nationals and companies of the other Contracting Parties to any less favorable treatment with regard to the investments, whether in their own or under their control, or to their activities in connection with such investments than their own nationals and companies or nationals and companies of third States.

(2) This treatment does not relate to the privileges accorded by a Contracting Party to third-country nationals or companies on the basis of their membership in a customs, economic or joint market or a free-trade area.

(3) 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 security in the territory of the other Contracting Parties.

(2) Investments by nationals or companies of a Contracting Party may be expropriated, nationalized or subject to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting Parties only on grounds of general well-being or of "social interest" and for compensation. The expropriation measures must be carried out according to the constitutional or legal procedures provided for. The compensation must correspond to the value of the expropriated investment immediately before the date on which the expropriation or nationalization became public. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; It must in fact be usable and freely transferable. The legality of the expropriation, nationalization or comparable measures 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 are 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 agrees that, with regard to investments made in its territory by nationals or companies of the other Contracting Parties, the conversion and transfer of the payments below may also be carried out freely and without restrictions in the future:

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

b) Of income;

c) To repay loans;

d) Licensing and other fees for the rights defined in Article 1 (1) (d);

e) Of the liquidation proceeds in the event of the complete or partial sale of the investment.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of a guarantee for 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 virtue of the rights of the former Contracting Party On the basis of legal transactions to the former contracting parties. 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 to the Contracting Party concerned on the basis of the transferred claims.

## **Article 7.**

In so far as the parties concerned have not made an alternative agreement approved by the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 4 (2) or 3, Article 5 or 6 shall be valid without delay for the agreed currency Course.

## **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 agreement with nationals or companies of the other Contracting Parties.

## **Article 9.**

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty. However, the contract shall in no case be applicable to differences of opinion or disputes arising out of the facts before the entry into force.

## **Article 10.**

Differences of opinion between a Contracting Party and a national or a company of the other Contracting Parties regarding investments shall, as far as possible, be settled by amicable agreement between the parties concerned. If such amicable agreement can not be reached within a period of six months, the parties concerned will apply the special procedures agreed between the Contracting Party and the national or the company of the other Party. If no special procedure has been agreed, the international arbitral tribunal shall be called upon in accordance with the rules of the United Nations Commission on International Trade Law, taking into account the provisions of this Treaty.

## **Article 11.**

(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 an ad hoc basis by appointing a member to each of the Contracting Parties, and both members agreeing to the members of a third State 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 as well as his 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 members of 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 this Convention shall not apply to the arbitration referred to above. 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 judicial decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by law or by virtue of a legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 12.**

This Treaty shall remain in force irrespective of whether diplomatic or consular relations exist.

## **Article 13.**

This Agreement shall apply to the Land of Berlin, except for the provisions of Protocol 6, in so far as it relates to aviation, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Republic of Panama within three months after the entry into force of the Treaty emits.

## **Article 14.**

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

(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, it shall be extended for an indefinite period unless one of the two Contracting Parties terminates the contract in writing with a period of twelve months. After ten years, the contract may be terminated at any time but remains in force for one year after termination.

(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 fifteen years from the date of expiry of the Treaty.

Done at Panama, this 2nd day of November 1983, in the German and Spanish languages, each text being equally authentic.

For the Federal Republic of Germany

Dr. Walter Wellhausen

Ambassador of the Federal Republic of Germany

For the Republic of Panama

Mr. Oyden Ortega Duran

Minister of Foreign Affairs

## **Protocol**

At the signing of the Agreement on the Reciprocal Encouragement and Protection of Capital Investments between the Federal Republic of Germany and the Republic of Panama, the undersigned plenipotentiaries have further adopted the following agreements, which shall be considered as an integral part of the Agreement:

(1) Addendum to 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 authority of the respective Contracting Party shall, in particular, be considered a national of a Contracting Party.

(2) Addendum to Article 2

Capital investments which, in accordance with the legal provisions of one of the Contracting Parties, have been made within the scope of the law of that Party by nationals or companies of the other Contracting Party, shall enjoy the full protection of this Convention.

(3) Addendum to Article 3

(a) "Activities" within the meaning of paragraph 1 of Article 3 shall include, in particular but not exclusively, the administration, employment, use and development of a capital investment. The following shall in particular be considered as "less favorable" treatment within the meaning of Article 3: restrictions on the acquisition of raw and auxiliary materials, energy and fuels, as well as means of production and exploitation of all kinds, hindrance of the sale of products within the country and abroad, and all measures having analogous effects. Measures taken for reasons of public safety, public order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) Each Contracting Party shall, in accordance with its domestic legal provisions, deal favourably with applications for immigration and residence of persons of the other Contracting Party who, in connection with the start-up and realization of a capital investment, wish to enter the territory of the first Contracting Party; The same rule shall apply to employees of a 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. Applications for work permits shall likewise be treated sympathetically.

(c) the provisions of Article 3 do not oblige a Contracting Party to extend the tax advantages, exemptions and reductions which, according to 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.

(4) Addendum to Article 4

(a) The term "expropriation" includes the deprivation or equivalent limitation of any right to an asset which alone or with other rights constitutes a capital investment.

(b) The right to indemnification exists even in the case of intervention by means of state measures in the enterprise which is the object of the investment, and as a consequence there is considerable damage to the economic substance of the same.

(5) Addendum to Article 7

A transfer within the meaning of Article 7 shall be deemed to have been effected "without delay" if it has been effected within the period of time normally necessary for the completion of the transfer formalities.

(6) With respect to the transport of goods and persons in connection with the implementation of capital investments, the Contracting Parties shall not exclude or impede transport undertakings of the other Contracting Party, and if necessary, shall grant authorizations for the carrying out of transport operations in accordance with their laws in force.

The following shall be included in the foregoing clause:

(a) goods intended directly for the investment of capital within the meaning of this Convention, 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 there is capital invested within the meaning of this Convention;

(b) persons traveling in connection with the implementation of capital investments.

Done at Panama, this 2nd day of November 1983 in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany

Dr. Walter Wellhausen

Ambassador of the Federal Republic of Germany

For the Republic of Panama

Mr. Oyden Ortega Duran  
Minister of Foreign Affairs

## Exchange of Letters

Mr. Minister:

I have the honor to record that both Contracting Parties have agreed, in the event that the Republic of Panama accedes to the Convention for the Settlement of Investment Disputes between States and Nationals of other States of March 18, 1965, to enter into negotiations on a supplementary agreement regulating the competence of the International Centre for Settlement of Investment Disputes between a Contracting Party and an investor. Such supplementary agreement shall form an integral part of the Treaty.

I should be grateful if you would kindly confirm your consent to the contents of this letter, and take this opportunity to assure Your Excellency of my highest consideration.

Panama, November 2, 1983

Dr. Walter Wellhausen  
Ambassador of the Federal  
Republic of Germany

Your Excellency

Lic. Oyden Ortega Duran  
Minister of Foreign Affairs  
of the Republic of Panama

Panama, November 2, 1983

Mr. Doctor

Walter Wellhausen  
Ambassador of the Federal Republic of Germany

Mr. Ambassador:

Both Contracting Parties have agreed that in the event that the Republic of Panama accedes to the Convention for the Settlement of Disputes between States and Nationals of other States of March 18, 1965, to enter into negotiations on a supplementary agreement regulating the competence of the International Centre for the Settlement of Disputes between a Contracting Party and an investor. Such supplementary agreement shall be an integral part of the Convention.

Oyden Ortega D.

Minister of Foreign Affairs

Panama, November 2, 1983

Mr. Ambassador:

We take this opportunity to inform you that measures of social interest within the meaning of Article 4 (2) are those officially adopted because of a need of a collective nature.

Oyden Ortega D.

Minister of Foreign Affairs

His Excellency

Dr. Walter Wellhausen

Ambassador of the Federal Republic of Germany

Panama, November 2, 1983

Mr. Minister:

I acknowledge receipt of your letter of November 2, 1983, the contents of which are as follows:

We take this opportunity to inform you that the measures for reasons of social interest within the meaning of Article 4 (2) are those officially adopted for a need of a collective nature.

Please accept, Excellency, the assurances of my highest consideration.

Dr. Walter Wellhausen

Ambassador of the Federal Republic of Germany

Federal Republic of Germany

Your Excellency

Mr. Oyden Ortega D.

Minister of Foreign Affairs

of the Republic of Panama