

# TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Germany and the Republic of Costa Rica

In the desire to deepen economic cooperation between the two countries by increasing mutual investment,

In the endeavor 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" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Shares and other securities in companies;
- c) Rights to funds used to create economic value, or to benefits that have 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) With regard to the Republic of Costa Rica:

Costarican according to the Political Constitution of the Republic of Costa Rica;

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 established in the territory of the Federal Republic of Germany and subject to German law, whether or not its activity is intended for profit,

b) With regard to the Republic of Costa Rica:

Any legal person or any association without legal personality established in the Republic of Costa Rica in accordance with Costa Rica legislation and established in the territory of Costa Rica, irrespective of whether its activity is directed to profit or not.

## **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) Investments made in their territory by nationals or companies of the other Contracting Parties in accordance with the laws of a Contracting Party shall enjoy the full protection of this Agreement.

(3) A Contracting Party shall in no way affect the administration, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or unjustified unequal treatment.

(4) This Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf to the extent that international law authorizes the respective Contracting Party to exercise sovereign rights or jurisdiction in such areas.

## **Article 3.**

(1) Each Contracting Party shall not subject investments in its territory owned or controlled by nationals or companies of the other Contracting Party to treatment less favorable than that accorded to investments of its own nationals and companies or to investments of nationals and companies of third States.

(2) Each Contracting Party shall not subject nationals or companies of the other Contracting Party, in respect of their activities directly related to investments in its territory, to treatment less favorable than that accorded to its own nationals and companies or to nationals and companies of third States.

(3) The treatment in question does not relate to the prerogatives which a Contracting Party grants to nationals or companies of third States by virtue of its membership of, or association with, an economic union, a common market, a customs union or a free trade area.

(4) The treatment accorded under this Article does not relate to advantages granted by a Contracting Party to nationals or companies of third States by virtue of a convention for the avoidance of double taxation or other agreements in the field of 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 Party.

(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. These measures must be carried out on the basis of a law. 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 must be paid forthwith and interest must be paid at the average deposit rate of the banks up to the date of payment; 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.**

(1) 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.

(2) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.

## **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) 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, constitute a general or special provision which makes the investments of the nationals or companies of the other Contracting Parties more favorable than those laid down in this Treaty Is to be granted, this provision shall prevail to the present 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 8.**

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.

## **Article 9.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled amicably 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 either Contracting Party, or if he is also prevented from attending, the next member of the Court of Justice who is not a national of either Contracting Party shall be appointed.

(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 Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the arbitration rules set out above may not be invoked with regard to the provisions of Article 27 (1) of the Convention 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 judicial decision of the arbitral 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 10.**

(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. 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 arbitral tribunal shall make its decisions on the basis of this Treaty and, where appropriate, other agreements between the Contracting Parties and the national law of the Contracting Party in whose territory the investment is situated, including the rules of International Private Law and the general principles of international law.

(4) The arbitral award shall be binding and shall not be subject to any appeal or other legal action other than those provided for in the aforementioned Convention. It shall be enforced in accordance with domestic law.

(5) 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 11.**

This Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which are permitted under the general rules of international law. Measures of this kind are to be lifted no later than the actual end of the dispute, irrespective of whether diplomatic relations exist.

## **Article 12.**

(1) This Treaty shall be ratified by the Contracting Parties; The instruments of ratification will be exchanged as soon as possible in San José.

(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 11 shall continue to apply for a period of fifteen years from the date of expiry of the Treaty.

DONE at San José, Costa Rica, this thirteenth day of September, one thousand nine hundred and ninety-four, in two copies each in Spanish and German, both texts being equally authentic. both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Fernando E. Naranjo V.

MINISTER OF FOREIGN AFFAIRS AND WORSHIP

José Rossi Umaña

MINISTER OF FOREIGN TRADE

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Wilfried Rupprecht

AMBASSADOR

## **Protocol**

In the act of signing the Treaty between the Government of the Republic of Costa Rica and the Government of the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have also adopted the following agreements, which are considered as an integral part of the Treaty:

### **1. Ad Article 1**

- a) The present Treaty shall not apply to investments made in the Republic of Costa Rica by natural persons who are nationals of the other Contracting Party if such persons, at the date of the initial investment, have had their permanent domicile for more than ten (10) years in the Republic of Costa Rica, except when it is proven that the investments come from abroad.
- b) The profits of an investment, and in the case of its reinvestment, also the profits thereof, shall enjoy the same protection as the investment itself.
- (c) 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. Ad Article 3**

- (a) "Activities" within the meaning of paragraph 2 shall mean, in particular but not exclusively, the management, use, utilization and development of an investment. The following, in particular, shall be regarded as "less favorable" treatment within the meaning of Article 3: limitations on the acquisition of raw materials and auxiliary inputs, energy and fuels as well as any means of production and exploitation, hindrance of the sale or purchase of products within the country and abroad, and any measures having similar effects. Measures to be 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) The provisions of Article 3 do not oblige a Contracting Party to extend to individuals and corporations domiciled in the territory of the other Contracting Party the tax advantages, exemptions and reliefs which under its tax laws are accorded only to individuals and corporations domiciled in its territory.
- c) The Contracting Parties, in accordance with their internal legal provisions, shall deal kindly with applications for immigration and residence of persons of one of the Contracting Parties who wish to enter the territory of the other Contracting Party in connection with an investment; the same rule shall apply to employees of a Contracting Party who, in connection with an investment, wish to enter and reside in the territory of the other Contracting Party to carry out their activity as employees.

Likewise, applications for work permits shall be dealt with kindly.

### **3. Ad Article 4**

The right to compensation shall also exist in the event of intervention by state measures within the meaning of Article 4, paragraph 2, in the enterprise which is the object of the investment and which results in considerable impairment of its economic value.

### **4. Ad Article 5**

- (a) A transfer within the meaning of Article 5 para. 2 shall be deemed to have been effected "without delay" if it has been effected within the period of time normally required for the completion of the transfer formalities. The time limit, which in

no case may exceed two (2) months, shall begin to run at the time of delivery of the corresponding duly submitted request.

(b) The exchange rate within the meaning of paragraph 2 shall not deviate essentially from the market value resulting from the conversion of the United States dollar into the currency of the Contracting Party in whose territory the investment is located and into the freely convertible currency desired by the investor in the official markets of the respective countries for current transactions.

## **5. Ad Article 8**

This Treaty shall in no case be applicable to divergences or disputes arising out of events prior to its entry into force.

## **6.**

For the transportation of goods and persons directly related to an investment to the border of the Contracting Party in whose territory the investment was made, the Contracting Parties shall not exclude or hinder and, where appropriate, shall grant the necessary authorizations for the transportation companies of the other Contracting Party to transport such goods and persons, subject to the rules of the relevant international law agreements in force between the Contracting Parties.

DONE at San José, Costa Rica, this thirteenth day of September, one thousand nine hundred and ninety-four, in two copies, in Spanish and German each, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Fernando E. Naranjo V.

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