

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama for the Promotion and Protection of Investments

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama;

Desiring to create favourable conditions for greater investment by nationals and companies of one state in the territory of the other state;

Recognising that the encouragement and reciprocal protection under International Agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both states;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement—

- (a) "investments" means every kind of asset and in particular includes : movable and immovable property and any other property rights such as mortgages, liens or pledges; shares, stock and debentures of companies or interest in the property of such companies; claims to money or to any performance under contract having a financial value; intellectual property rights and goodwill; business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) Shares, stock and debentures of companies or interest in the property of such companies;
- (iii) Claims to money or to any performance under contract having a financial value;
- (iv) Intellectual property rights and goodwill;
- (v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
- (b) "returns" means the amounts yielded by an investment and in particular includes profit, interest, capital gains, dividends, royalties or fees;
- (c) "nationals" means : in respect of the Republic of Panama : natural persons deriving their status as nationals of the Republic of Panama from the constitution of Panama; in respect of the United Kingdom : natural persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;(i) In respect of the Republic of Panama : natural persons deriving their status as nationals of the Republic of Panama from the constitution of Panama;
- (ii) In respect of the United Kingdom : natural persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;
- (d) "companies" means : in respect of the Republic of Panama : all those juridical persons constituted in accordance with legislation in force in Panama as well as companies and associations with or without juridical personality which have their domicile in the territory of the Republic of Panama, excepting State-owned enterprises; in respect of the United Kingdom : corporations, firms or associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 10;(i) In respect of the Republic of Panama : all those juridical persons constituted in accordance with legislation in force in Panama as well as companies and associations with or without juridical personality which have their domicile in the territory of the Republic of

Panama, excepting State-owned enterprises;

(ii) In respect of the United Kingdom : corporations, firms or associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 10;

(e) "territory" means : in respect of the Republic of Panama : all the national territory. in respect of the United Kingdom : Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 10.(i) In respect of the Republic of Panama : all the national territory.

(ii) In respect of the United Kingdom : Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 10.

Article 2. Promotion, Treatment and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investment of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

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

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

(3) The foregoing provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation, or

(c) Domestic legislation in force at the time of signature of this Agreement relating to specific economic activities reserved to nationals or companies of one Contracting Party, as specified in the Annex to this Agreement.

Article 4. Compensation for Losses

Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State, and in the exceptional event of losses suffered resulting from requisitioning or from destruction of property which was not caused in combat action or was not required by the necessity of the situation, the investor shall be accorded restitution or adequate compensation in accordance with the relevant laws. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for an internal public or social purpose against prompt, adequate and effective compensation, and in conformity with the internal law. Such compensation shall amount to the fair value which the investment expropriated had immediately before the expropriation became known, shall include interest until the date of payment, shall be made without delay, be effectively realisable and be freely transferable. No later than the time of the expropriation, adequate provision shall be made for the assessment and payment of the compensation. The legality of the expropriation and the amount of compensation shall be established by due process of law in the territory of the Contracting Party making the expropriation.

(2) If either Contracting Party expropriates the investment of company duly incorporated, constituted or otherwise organised in territory, and if nationals or companies of the other Contracting Party, directly or indirectly, own, hold or have other rights with respect to equity of such company, then the Contracting Party within whose territory the expropriation occurs shall ensure that nationals or companies of the other Party receive compensation in accordance with the provisions of preceding paragraph.

Article 6. Repatriation of Investments and Returns

Each Contracting Party shall in respect of investments guarantee nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns, subject to the right of each Contracting Party in exceptional balance payments difficulties and for a limited period to exercise equitably and good faith powers conferred by its laws.

Article 7. Settlement of Investment Disputes

Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not be settled amicably, shall after a period of six months from written notification of the claim be submitted to such procedures for settlement as may be agreed to between the parties to the dispute or, if no such procedures have been agreed, to arbitration under the Arbitration Rules of the United National Commission on International Trade Law. The parties may agree in writing to modify those Rules.

Article 8. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled in the first instance through discussion between experts representing each Party and failing that, through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled it shall be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the period specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the Preseident 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such a decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If one Contracting Party makes payments under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise :

(a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party (or its designated Agency), and

(b) That the former Contracting Party (or its designated Agency) is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

The former Contracting Party (or its designated Agency) shall accordingly if it so desires be entitled to assert any such right or claim to the same extent as its predecessor in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of companies or nationals of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its expenditure in the territory of the other Contracting Party.

Article 10. Territorial Extension

At the time of ratification of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible⁽¹⁾ as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 11. Entry Into Force

This Agreement shall be ratified and shall enter into force on the exchange instruments of ratification⁽²⁾ .

Article 12. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from date on which either Contracting Party shall have given written notice termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years, after the date termination.

In witness whereof the undersigned, duly authorised thereto by respective Governments have signed this Agreement.

Done in duplicate at Panama City this seventh day of October 19 the English and Spanish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

T. H. STEGGLE

For the Government of the Republic of Panama :

CARLOS HOFFMAN

Pursuant to Article 3 (3) (c), the Republic of Panama states the economic sectors and activities which are constitutional and legal exceptions excluded from the effect of this Agreement:

Communications; agencies of foreign companies; distribution and sale of imported products; retail trade; insurance; state-owned enterprises; privately-owned public utility companies; energy production; the exercise of the liberal professions; customs brokerage; banking; the right to exploit natural resources, including fishing; the production of hydro-electric power; ownership of land within 10 kilometers of the Panamanian frontiers.

(1) The United Kingdom ratified the Agreement on behalf of the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man and Hong Kong.

(2) The Agreement entered into force on 7 November 1985.