Treaty between the Federal Republic of Germany and the Republic of Trinidad and Tobago concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Republic of Trinidad and Tobago,

Hereinafter referred to as the "Contracting Parties" –

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Recognizing the important complementary role of foreign investments in the process of economic development,

Recognizing also the increasing need for measures to protect the environment –

Have agreed as follows:

Article 1. Definitions

For the purposes of this Treaty:

1. The term "investment" comprises every kind of asset, and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as any other rights in rem such as mortgages, liens and pledges;

(ii) Shares, stocks or other forms of equity participation in companies and other kinds of interest in companies;

(iii) Claims to money which has been used to create an economic value or claims to any performance having an economic value, loans only being included when they are directly related to a specific investment;

(iv) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trademarks, trade names, trade and business secrets, technical processes, know-how and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

(b) Any alteration of the form in which assets are invested shall not affect their classification as investments.

2. The term "returns" means the amounts yielded by an investment for a definite period, and in particular, though not exclusively, includes profit, dividends, interest, capital gains, royalties or fees.

3.(a) The term "nationals" means

(i) In respect of the Republic of Trinidad and Tobago:

Persons deriving their status as citizens or residents of the Republic of Trinidad and Tobago from the law in force in the Republic of Trinidad and Tobago;

(ii) In respect of the Federal Republic of Germany:

Germans within the meaning of the Basic Law of the Federal Republic of Germany.

(b) Without prejudice to any other method of determining nationality, in particular any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Contracting Party.

4. The term "companies" means

(a) In respect of the Republic of Trinidad and Tobago:

Corporations, firms and associations incorporated or constituted under the law in force in the Republic of Trinidad and Tobago;

(b) In respect of the Federal Republic of Germany:

Any juridical person as well as any commercial or other company or association 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.

5. The term "territory" means

(a) In respect of the Republic of Trinidad and Tobago:

The archipelagic state of Trinidad and Tobago, comprising the several islands of the Republic of Trinidad and Tobago, its archipelagic waters, territorial sea and airspace thereof, as well as the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights or jurisdiction in accordance with the laws of Trinidad and Tobago and with international law;

(b) In respect of the Federal Republic of Germany:

The territory of the Federal Republic of Germany including the territorial sea as well as the Exclusive Economic Zone and the continental shelf insofar as international law permits the exercise of sovereign rights or jurisdiction in these areas.

Article 2. Promotion of Investments

Each Contracting Party shall encourage and create favourable conditions for investments in its territory by nationals or companies of the other Contracting Party and shall admit such investments in accordance with the laws in force in its territory.

Article 3. Protection of Investments

(1) Investments of nationals or companies of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(2) 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.

(3) 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.

(4) Returns from investments and, in the event of their reinvestment, the returns therefrom, shall enjoy the same protection as the investments.

Article 4. National Treatment and Most-favoured-nation Treatment

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

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

(3) Such treatment shall not relate to privileges which either Contracting Party accords to nationals or companies of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade

area.

(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 operations 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 that have to be taken 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 treatment granted under this Article shall not relate to advantages which either Contracting Party accords to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(6) Issues of taxation on income and on capital shall be dealt with in accordance with the agreement for the avoidance of double taxation between the Contracting Parties and in accordance with the respective national tax law. The provisions of this Article do not oblige a Contracting Party to extend to nationals or companies 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 nationals or companies resident in its territory.

(7) 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 in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(8) Nationals or companies of either Contracting Party are free to choose international means of transportation for the transport of persons as well as capital goods directly connected with an investment within the meaning of this Treaty, notwithstanding bilateral or multilateral agreements which are binding for both Contracting Parties.

Article 5. Expropriation

(1) Investments by nationals or companies of either Contracting Party shall not be directly or indirectly expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose and against compensation. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the date of the actual expropriation or the date on which the threatened expropriation has become publicly known, whichever is the earlier. The compensation shall be paid without delay and shall carry the usual bank rate of interest until the time of payment and shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(2) Nationals or companies 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. Compensation for Losses

Nationals or companies 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 nationals or companies or to nationals or companies of any third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

Article 7. Repatriation of Investments and Returns

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, in particular:

(a) Of the principal and additional amounts to maintain or increase the investment;

(b) Of the returns;

(c) In repayment of loans as defined in Article 1 (1) (a) (iii);

(d) Of the proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) Of the compensation provided for in Articles 5 and 6.

Article 8. Subrogation

(1) If either Contracting Party makes a payment to any of its nationals or companies under a guarantee 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 12, recognize the assignment whether under a law or pursuant to a legal transaction, of any right or claim of such national or company to the former Contracting Party.

(2) The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 5 (1) and Article 6 as well as Article 7 shall apply mutatis mutandis.

Article 9. Rate of Exchange and Transfer Modalities

(1) All transfers referred to under this Treaty shall be made without delay at the rate of exchange applicable on the date of transfer.

(2) Notwithstanding Article 7, a Contracting Party

(a) May require reports of transfers of currency or other monetary instruments provided that such requirements shall not unreasonably impair or derogate from the free and undelayed transfer ensured by this Treaty; and

(b) Shall ensure the satisfaction of judgements in civil, administrative and criminal proceedings through the equitable, nondiscriminatory and good faith application of its laws and regulations.

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

(4) A transfer shall be deemed to have been made "without delay" within the meaning of paragraph (1) of this Article if effected within such period as is normally required for the completion of transfer formalities. The said period will commence on the day on which the relevant request has been submitted and may not exceed three months. In respect of the Republic of Trinidad and Tobago, the transfer of the proceeds from the liquidation or the sale of the investment may not exceed four months.

Article 10. Application of other Rules

If the law in force in the territory of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty contains regulations, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulations shall to the extent that they are more favourable prevail over this Treaty.

Article 11. Application of the Treaty

This Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the law in force in the territory of the latter, but the provisions of this Treaty shall not apply to any dispute or claim which has been raised before its entry into force.

Article 12. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty should, as far as possible, be settled through diplomatic channels.

(2) If a dispute cannot thus be settled, 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 four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of 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 arbitral tribunal may make a different ruling concerning shared costs.This ruling shall be binding on both Contracting Parties. In all other respects the arbitral tribunal shall determine its own procedure.

Article 13. Settlement of Disputes between a Contracting Party and a National or Company of the other Contracting Party Concerning Investments

(1) Disputes between a Contracting Party and a national or company of the other Contracting Party concerning an obligation of the former under this Treaty in relation to an investment of the latter should as far as possible be settled amicably between the parties in dispute.

(2)

(a) If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it shall be submitted, upon request of a national or company, either to the competent tribunal of the Contracting Party in whose territory the investment was made, or to international arbitration according to the provisions of paragraph (3) of this Article.

(b) A national or company of the Republic of Trinidad and Tobago holding an investment in Germany can seek international arbitration even after the dispute has been decided by a German court. A national or company of the Federal Republic of Germany holding an investment in Trinidad and Tobago may not seek international arbitration if a court of the Republic of Trinidad and Tobago has rendered a decision in substance on the dispute.

(3) In case of international arbitration, the dispute shall be submitted, at the choice of a national or company either to:

(a) The International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965; or

(b) The Court of Arbitration of the International Chamber of Commerce; or

(c) An arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The award shall be binding on both parties and shall not be subject to any appeal or remedy other than those provided for in the said instruments. The award shall be enforced in accordance with domestic law.

(5) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the national or company of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

Article 14. Entry Into Force, Duration and Termination

(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 date of exchange of the last instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party twelve months before its expiration. After the expiry of the

period of ten years this Treaty may be denounced at any time by either Contracting Party giving twelve months' notice.

(3) This Treaty shall remain in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

(4) In respect of investments made prior to the date of termination of this Treaty, the provisions of the preceding Articles shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

Done at Berlin on 8 September 2006 in duplicate in the German and the English languages, both texts being equally authentic.

For the Federal Republic of Germany

P. Ammon

For the Republic of Trinidad and Tobago

Kenneth Valley