

No. 6024

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Second Agreement regarding certain matters arising from
the validation of German dollar bonds (with schedule).
Signed at Bonn, on 16 August 1960**

Official texts: English and German.

Registered by the United States of America on 3 January 1962.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Deuxième Accord relatif à certaines questions ayant trait à
la validation d'obligations allemandes émises en dollars
(avec liste). Signé à Bonn, le 16 août 1960**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 3 janvier 1962.

No. 6024. SECOND AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY REGARDING CERTAIN MATTERS ARISING FROM THE VALIDATION OF GERMAN DOLLAR BONDS. SIGNED AT BONN, ON 16 AUGUST 1960

The United States of America and the Federal Republic of Germany,

Considering, that the United States of America (hereinafter referred to as "the United States") and the Federal Republic of Germany (hereinafter referred to as "the Federal Republic") concluded on April 1, 1953 an Agreement Regarding Certain Matters Arising from the Validation of German Dollar Bonds,² which entered into force on September 16, 1953;

That Article 1 of that Agreement provides that, except as may be agreed between the Federal Republic and the United States, the Federal Republic will not amend or modify its Law for the Validation of German Foreign Currency Bonds of August 25, 1952 (*Bundesgesetzblatt* 1952, Part I, page 553) (hereinafter referred to as "the Validation Law") or the Schedule thereto as they relate to bonds, debentures or other obligations listed in the said Schedule or in the First Implementing Ordinance under the said Law of February 21, 1953 (*Bundesgesetzblatt* 1953, Part I, page 31) and in respect of which the Schedule or the said Ordinance describes the United States as the Country of Offering, or extend the provisions of the said Law to bonds offered in the United States and not listed in the said Schedule or the said Ordinance;

That the Validation Law and thus the said Agreement relate only to Dollar Bonds whose issuers have their seat in the area of applicability of the Validation Law;

That it appears now in the mutual interest to extend the provisions of the Validation Law and the Agreement to the Dollar Bonds described in Article I, paragraph 1, below, whose issuers have no seat in the area of applicability of the Validation Law, since the Dollar Bonds are guaranteed by corporations located in that area or since the issuers own realizable assets in that area;

¹ Came into force on 30 June 1961, upon the exchange of the instruments of ratification at Washington, in accordance with article VII (2).

² United Nations, *Treaty Series*, Vol. 224, p. 3.

That it further appears necessary to enable the Federal Republic to amend the Validation Law with a view to allowing the subsequent granting of declaratory decrees, so as to eliminate hardships borne by former holders of Dollar Bonds;

Have agreed as follows :

Article I

(1) Dollar Bonds of the types listed in the attached Schedule¹ shall be deemed to be foreign currency bonds as defined in Article I of the Validation Law. In respect of such Dollar Bonds, the United States shall be deemed to be the Country of Offering.

(2) The provisions of the Validation Law, the provisions of the Second Implementing Ordinance (*Bundesanzeiger* No. 50 of March 13, 1953) and of the Twelfth Implementing Ordinance (*Bundesgesetzblatt* 1956, Part I, page 742) thereto dated respectively March 7, 1953 and August 11, 1956, and the arrangements made in the Agreement between the Government of the United States and the Government of the Federal Republic of February 27, 1953² and in the Agreement between the United States and the Federal Republic of April 1, 1953 shall apply to the Dollar Bonds listed in the attached Schedule including coupons issued in connection with the said Bonds, except as otherwise hereinafter provided.

(3) The Federal Republic may, with the consent of the Government of the United States, provide for the validation of other Dollar Bonds.

Article II

The provisions referred to in Article I, paragraph 2, above, shall apply to the Dollar Bonds listed in the attached Schedule under serial number 1 with the following provisos :

1. The guarantors referred to under serial number 1 of the attached Schedule shall be deemed to be the issuers.
2. Articles 2 and 50 of the Validation Law and Article II of the Agreement between the United States and the Federal Republic of April 1, 1953 shall apply only in respect of the guarantors' obligations.
3. The Examining Agency (Article 11 of the Validation Law) shall be designated within two months from the date of entry into force of this Agreement.
4. The Opening Date (Article 19 of the Validation Law) shall be the first day of the third month following the date of the entry into force of this Agreement.

¹ See p. 246 of this volume.

² United Nations, *Treaty Series*, Vol. 223, p. 167.

5. The registration period prescribed in Article 21, paragraph 1, first sentence, of the Validation Law shall be three years. The provisions of Article 21, paragraph 1, second sentence, and paragraph 2 of that Law shall not apply.
6. The provisions of Article 36 of the Validation Law shall apply with the proviso that the denial of validation shall not be noted on the registered bond and that such bond shall not be invalidated.
7. The references in Article 50, paragraph 2, of the Validation Law to invalidation of bonds shall be deemed to be references to the return of the bonds.

Article III

The provisions referred to in Article I, paragraph 2, above, shall apply to the Dollar Bonds listed in the attached Schedule under serial numbers 2, 3, 4, 5, 6 and 7 with the following provisos :

1. Article 2 of the Validation Law and Article II of the Agreement between the United States and the Federal Republic of April 1, 1953 shall not apply. No rights arising out of the Dollar Bonds may be asserted within the Federal Republic unless the bonds have been validated. The prohibition of payment in Article 14 of the Validation Law shall apply only with regard to payment from an issuer's assets located within the Federal Republic.
2. The Examining Agency (Article 11 of the Validation Law) shall be designated within two months from the date of entry into force of this Agreement.
3. Whenever, under the provisions of the Validation Law, venue depends on the seat of the issuer, the seat of the Examining Agency shall be controlling.
4. The Opening Date (Article 19 of the Validation Law) shall be the first day of the third month following the date of entry into force of this Agreement.
5. The registration period prescribed in Article 21, paragraph 1, first sentence, of the Validation Law shall be three years. The provisions of Article 21, paragraph 1, second sentence, and paragraph 2 of that Law shall not apply.
6. The provisions of Article 36 of the Validation Law shall apply with the proviso that the denial of validation shall not be noted on the registered bond and that such bond shall not be invalidated.
7. The provisions of the Validation Law governing declaratory decrees (Article 4), invalidation of foreign currency bonds which have not been validated (Article 50), subsequent validation of foreign currency bonds (Article 51), compensation for foreign currency bonds which

have become invalid (Article 52), claims for compensation under declaratory decrees (Article 53), compensation claims for amortization bonds (Article 54), and the release of collateral (Articles 59, 60 and 61) shall not be applicable.

8. The administrative fee prescribed in Article 64 of the Validation Law shall not exceed four percent of the measuring amount prescribed in paragraph 1, third sentence, of that Article.

Article IV

The Federal Republic undertakes to enact legislation permitting bankruptcy proceedings to take place in respect of the assets in the Federal Republic of the issuers of Dollar Bonds listed in the Schedule under serial numbers 2 to 7. In this connection, provision may be made to the effect that the validation costs to be borne by issuers pursuant to Articles 63 and 64 of the Validation Law shall, in the event of bankruptcy proceedings in respect of the issuers' assets, be deemed to be first priority charges within the meaning of Article 58 No. 2 of the German Bankruptcy Code.

Article V

The Federal Republic may amend the Validation Law by enacting provisions permitting a subsequent granting of declaratory decrees in respect of Dollar Bonds in cases where the claimants' failure to comply with the registration periods prescribed in the Validation Law was not due to gross negligence on their part. In this connection, the Federal Republic will provide that claims for compensation under declaratory decrees issued subsequently may not be asserted where such assertion would impair the claims for compensation under Articles 52, 53 and 54 of the Validation Law, and that claims for compensation of the first-mentioned type shall be inadmissible to the extent that their admission would entitle the issuer to make the reductions provided for in Article 53, paragraph 2, or Article 54, paragraph 2, of the Validation Law.

Article VI

(1) This Agreement shall also apply to *Land* Berlin provided that the Government of the Federal Republic has not delivered a contrary declaration to the Government of the United States within three months from the date of entry into force of this Agreement.

(2) In the application of this Agreement to *Land* Berlin, references to the Federal Republic of Germany shall be deemed also to be references to *Land* Berlin.

Article VII

(1) This Agreement shall require ratification; the instruments of ratification shall be exchanged in Washington as soon as possible.

(2) This Agreement shall enter into force upon the exchange of the instruments of ratification.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE at Bonn in duplicate, in the English and German languages, both texts being equally authentic, this sixteenth day of August, 1960.

For the United States
of America :
Walter DOWLING

For the Federal Republic
of Germany :
v. BRETANO

SCHEDULE TO ARTICLE I, PARAGRAPH 1
 VERZEICHNIS, ANLAGE NACH ARTIKEL I ABSATZ 1
 LISTE-ANNEXE AU PARAGRAPHE 1 DE L'ARTICLE PREMIER

<i>Ser. No.</i>	<i>in German Designation</i>	<i>Issuer</i>	<i>in American Designation</i>	<i>Original Rate of Interest</i>	<i>Designation</i>	<i>Year of Issue</i>
<i>Lfd. Nr.</i>	<i>in deutscher Bezeichnung</i>	<i>Aussteller</i>	<i>in amerikanischer Bezeichnung</i>	<i>Ursprünglicher Zinssatz</i>	<i>Bezeichnung</i>	<i>Ausgabejahr</i>
<i>Nº</i>	<i>Désignation allemande</i>	<i>Émetteur</i>	<i>Désignation américaine</i>	<i>Intérêt initial</i>	<i>Désignation</i>	<i>Année d'émission</i>
1	Ostpreussenwerk Aktiengesellschaft, Garanten : Vereinigte Industrie-Unternehmungen Aktiengesellschaft; Preussische Elektrizitäts-Aktiengesellschaft	East Prussian Power Company Guarantors : United Industrial Corporation; Prussian Electric Company		6%	First Mortgage Sinking Fund Gold Bonds Due June 1, 1953	1928
2	Aktiengesellschaft Sächsische Werke	Saxon Public Works, Inc.		7%	First Mortgage Twenty-Year Sinking Fund Guaranteed External Loan Gold Bonds	1925
3	Aktiengesellschaft Sächsische Werke	Saxon Public Works, Inc.		6½%	General and Refunding Mortgage Guaranteed Gold Bonds Due May 1, 1951	1926
4	Aktiengesellschaft Sächsische Werke	Saxon Public Works, Inc.		6%	Guaranteed Gold Notes Due July 15, 1937	1932
5	Aktiengesellschaft Sächsische Werke	Saxon Public Works, Inc.		5%	Guaranteed Serial Gold Notes Due March 1, 1943	1933
6	Märkisches Elektrizitätswerk Aktiengesellschaft (jetzt : Brandenburgisch-Mecklenburgische Elektrizitätswerke Aktien- gesellschaft)	Brandenburg Electric Power Company		6%	Twenty-Five- Year First Mortgage Sinking Fund Gold Bonds External Loan Due May 1, 1953	1928
7	Überlandzentrale Pommern Aktiengesellschaft	Pomerania Electric Company		6%	Sinking Fund Mortgage Gold Bonds Due May 1, 1953	1928