

No. 24235

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**FRANCE  
and  
PANAMA**

**Agreement concerning the treatment and protection of  
investments (with exchanges of letters). Signed at  
Panama on 5 November 1982**

*Authentic texts: French and Spanish.*

*Registered by France on 26 June 1986.*

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**FRANCE  
et  
PANAMA**

**Accord sur le traitement et la protection des investissements  
(avec échanges de lettres). Signé à Panama le 5 no-  
vembre 1982**

*Textes authentiques : français et espagnol.*

*Enregistré par la France le 26 juin 1986.*

[TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE FRENCH  
REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF  
PANAMA CONCERNING THE TREATMENT AND PROTEC-  
TION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Panama, hereinafter referred to as the “Contracting Parties”,

Desiring to increase economic co-operation between the two States in respect of international law and to create favourable conditions for French investments in Panama and Panamanian investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

*Article 1.* For the purposes of this Agreement:

1. The term “investments” shall apply to assets such as property, rights and interests of all categories and, particularly to:

- (a) Movable and immovable property and all other rights in rem such as mortgages, securities, usufructs, sureties or other guarantees, preferential claims and similar rights;
- (b) Shares, premiums and other forms of participation, albeit minority or indirect, in companies organized in the territory of either Party;
- (c) Bonds, claims and rights to any benefits having an economic value;
- (d) Copyright, industrial property rights (such as patents, licences, registered trademarks, industrial models and mock-ups), technical processes and know-how, registered trade names and goodwill;
- (e) Concessions accorded by law or by virtue of a contract, including concessions for prospecting, cultivating, mining or developing natural resources, including those situated in the maritime zones of the Contracting Parties;

it being understood that the said assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zones the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the State in whose territory or maritime zones the investment is made.

2. The term “nationals” shall apply to individuals having the nationality of either Contracting Party, in accordance with its legislation.

<sup>1</sup> Came into force on 9 October 1985, i.e., one month after the date of receipt of the last of the notifications by which the Parties informed each other (on 3 February 1984 and 9 September 1985) of the completion of the required internal procedures, in accordance with article 12.

3. The term “companies” shall apply to any body corporate organized in the territory of either Contracting Party in accordance with the legislation of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by bodies corporate having their registered offices in the territory of one of the Contracting Parties and organized in accordance with its legislation.

4. The term “income” shall apply to all proceeds from an investment, such as profits, royalties or interest for a given period.

The income from an investment and, in the case of reinvestment, the income from reinvestment, shall have the same protection as the investment.

5. The term “maritime zones” shall mean the marine and submarine areas over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

*Article 2.* Each Contracting Party, within the framework of its legislation and the provisions of this Agreement, shall permit and promote, investments in its territory and maritime zones by nationals and companies of the other Party.

*Article 3.* Each Contracting Party shall undertake to accord, in its territory and maritime zones, just and equitable treatment, in accordance with its legislation and in respect of international law, to the investments of nationals and companies of the other Party, and to ensure that the exercise of the right so granted is not impeded either *de jure* or *de facto*.

*Article 4.* Each Contracting Party, in its territory and maritime zones, shall apply to nationals and companies of the other Party, in respect of their investments and activities related to those investments, the treatment accorded to its own nationals or companies, or the treatment accorded to nationals or companies of the most favoured nation, if the latter is more advantageous. In that context nationals authorized to work in the territory and maritime zones of one of the Contracting Parties must have access to the appropriate material facilities for carrying out their professional activities.

Such treatment shall not, however, include privileges granted by either Contracting Party to nationals or companies of a third State by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional economic organization.

*Article 5.* 1. The investments made by nationals or companies of one of the Contracting Parties shall enjoy full and absolute protection and security in the territory and maritime zones of the other Contracting Party.

2. The Contracting Parties shall not take expropriation, nationalization or any other measures which would have the effect of dispossessing, directly or indirectly, the nationals and companies of the other Party, of investments belonging to them in its territory and maritime zones, except for reasons of public necessity or “public interest” and on condition that such measures are not discriminatory or contrary to a specific undertaking on the matter.

Any dispossession measures taken must be carried out in accordance with the respective constitutional or legal procedures and shall give rise to payment of prompt and adequate compensation, the amount of which, calculated on the basis of the full value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

Necessary and adequate measures shall be taken to ensure that the amount and manner of payment of the compensation may be determined at the latest on the date of expropriation. Such compensation shall be effectively realizable, paid without delay and freely transferrable. It shall yield interest, calculated at the rate agreed upon by the Contracting Parties up to the date of payment.

3. Investors of one of the Contracting Parties whose investments have suffered losses resulting from war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime zones of the other Contracting Party shall receive, from that Party, treatment that is no less favourable than that accorded in similar cases to its own investors or those of the most-favoured nation. In such an event they shall receive adequate compensation.

*Article 6.* A Contracting Party, in whose territory or maritime zones investments have been made by nationals or companies of the other Contracting Party, shall accord to these nationals or companies the free transfer of:

- (a) Interest, dividends, profits and other current income;
- (b) Royalties from the intangible property listed in article 1, paragraph 1, subparagraphs (d) and (e);
- (c) Payments by way of repayments on loans which have been contracted in the normal manner;
- (d) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation in the invested capital;
- (e) Compensation for dispossession or loss provided for in article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zones of the other Contracting Party by virtue of an approved investment shall also be authorized to transfer to their country of origin an appropriate proportion of their remuneration.

The transfers referred to in the preceding paragraphs shall be carried out without delay at the normal rate of exchange officially applicable on the date of transfer.

*Article 7.* In so far as the regulations of one Contracting Party contain guarantees for investments made abroad, a guarantee may be granted, on a case-by-case basis, for investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

The guarantee referred to in the preceding paragraph shall be available for investments by nationals and companies of one Contracting Party in the territory or maritime zones of the other Party only if the investments have been granted prior approval by the latter Party.

*Article 8.* 1. Any dispute concerning investments between one of the Contracting Parties and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

2. If the dispute has not been settled amicably within a period of six months, it may be settled in accordance with the procedures appearing in any special undertakings which may exist between the Contracting Party and the national or company of the other Contracting Party, provided that such undertakings have been concluded before the entry into force of this Agreement.

In the absence of such undertakings, the dispute shall be submitted to international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law, as adopted by the General Assembly of the United Nations in its resolution 31/98 of 15 December 1976,<sup>1</sup> and taking into account the provisions of this Agreement.

*Article 9.* When one Contracting Party, by virtue of a guarantee issued in respect of an investment in the territory of the other Party, makes payments to one of its own nationals or companies, it shall thereby enter into the rights and shares of the said national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to or pursue the action envisaged in article 8.

*Article 10.* Without prejudice to the provisions of this Agreement, investments which have been the subject of a specific undertaking by one Contracting Party *vis-à-vis* nationals and companies of the other Party shall be governed, by the terms of that undertaking, in so far as its provisions are no less favourable than those laid down by this Agreement.

*Article 11.* 1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement must be settled by a bilateral technical commission and, if necessary, by other diplomatic means.

2. If the dispute is not settled, within six months from the time it was raised by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The tribunal shall be formed for each individual case in the following manner:

Each Contracting Party shall designate a member, and the two members shall designate, by joint agreement, a national of a third State to be appointed Chairman by the two Contracting Parties. All members must be appointed within a period of two months following the date on which one of the Contracting Parties informed the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time-limits laid down in paragraph 3 above have not been respected, either Contracting Party, in the absence of any applicable agreement, shall invite the Secretary-General of the United Nations to make the necessary designations. If the Secretary-General is a national of one of the Contracting Parties or if, for any other reason, he is unable to perform this function, the most senior Under-Secretary-General, who is not a national of one of the Contracting Parties, shall make the necessary designations.

5. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and fully enforceable for the Contracting Parties.

The Tribunal shall establish its own rules of procedure. It shall interpret the ruling at the request of either Contracting Party. Unless the Tribunal provides otherwise, taking special circumstances into account, the legal costs, including the fees of the arbitrators, shall be shared equally by the two Governments.

<sup>1</sup> United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39 (A/31/39)*, p. 182.

*Article 12.* Each Party shall notify the other of the internal procedures required for the entry into force of this Agreement; the latter shall enter into force one month after the date of receipt of the last such notification.

The Agreement is concluded for an initial period of 10 years; it shall remain in force thereafter unless either Party gives notice through the diplomatic channel one year in advance of its intention to terminate the Agreement.

Investments made while this Agreement was in force shall continue to enjoy the protection of its provisions for an additional period of 15 years after it has ceased to have effect.

IN WITNESS WHEREOF the representatives of the two Governments, duly authorized for that purpose, have signed this agreement and affixed their seals thereto.

DONE at Panama, on 5 November 1982, in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government  
of the French Republic:

[Signed]

PIERRE-ANDRÉ DUMONT  
Ambassador of France to Panama

For the Government  
of the Republic of Panama:

[Signed]

JUAN JOSÉ AMADO III  
Minister for Foreign Affairs

## EXCHANGES OF NOTES

### I a

REPUBLIC OF PANAMA  
MINISTRY OF FOREIGN AFFAIRS  
PANAMA

5 November 1982

Sir,

In the course of the negotiations which led to the signing, today, of the agreement between our two countries concerning the treatment and protection of investments, your delegation indicated that the French expression "*utilité publique*" used in article 5, paragraph 2 of the agreement includes, in particular, the concept of public interest which is referred to in the political constitution of my country.

I should be grateful if you would be so good as to confirm that your Government agrees to this.

Accept, Sir, etc.

[Signed]

JUAN JOSÉ AMADO III  
Minister for Foreign Affairs

His Excellency Mr. Pierre-André Dumont  
Ambassador of France to Panama

## II a

## FRENCH EMBASSY IN PANAMA

Panama, 5 November 1982

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I a]

I have the honour to confirm that my Government agrees to this text.  
Accept, Sir, etc.

[Signed]

PIERRE-ANDRÉ DUMONT  
Ambassador of France to Panama

His Excellency Mr. Juan José Amado III  
Minister for Foreign Affairs  
of the Republic of Panama

## I b

## FRENCH EMBASSY IN PANAMA

Panama, 5 November 1982

Sir,

I have the honour to refer to the agreement signed today between the Government of the French Republic and the Government of the Republic of Panama on the treatment and protection of investments and to clarify that the interpretation of this Agreement is as follows:

1. *In respect of article 3:*

(a) Any improper or discriminatory restriction on the purchase and transportation of raw materials and intermediate goods, energy and fuel and means of production and operation of all types, any improper or discriminatory impediment on the sale and transportation of products within the country and abroad and any other measure which could have a similar effect shall be considered *de jure* or *de facto* impediments to just and equitable treatment;

(b) The Contracting Parties shall give favourable consideration, within the framework of their domestic legislation, to applications for entry and for residence, work and travel permits submitted by nationals of a Contracting Party by virtue of an investment in the territory of the other Contracting Party.

2. *With regard to article 5:*

The interest rate agreed upon by the Contracting Parties shall be the official rate of interest of the special drawing right as established by the International Monetary Fund.

I should be grateful if you would be so good as to inform me of your Government's agreement on the contents of this letter.

Accept, Sir, etc.

[Signed]  
PIERRE-ANDRÉ DUMONT  
Ambassador of France to Panama

His Excellency Mr. Juan José Amado III  
Minister for Foreign Affairs  
of the Republic of Panama

II b

REPUBLIC OF PANAMA  
MINISTRY OF FOREIGN AFFAIRS  
PANAMA

5 November 1982

Sir:

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I b]

I have the honour to confirm that my Government agrees to the contents of this letter.

Accept, Sir, etc.

[Signed]  
JUAN JOSÉ AMADO III  
Minister for Foreign Affairs

His Excellency Mr. Pierre-André Dumont  
Ambassador of France to Panama