

No. 27002

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**FEDERAL REPUBLIC OF GERMANY  
and  
PANAMA**

**Treaty concerning the encouragement and reciprocal protection of investments (with protocol and exchanges of letters). Signed at Panama City on 2 November 1983**

*Authentic texts: German and Spanish.*

*Registered by the Federal Republic of Germany on 5 January 1990.*

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**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE  
et  
PANAMA**

**Traité relatif à l'encouragement et à la protection réciproque des investissements (avec protocole et échanges de lettres). Signé à Panama le 2 novembre 1983**

*Textes authentiques : allemand et espagnol.*

*Enregistré par la République fédérale d'Allemagne le 5 janvier 1990.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF PANAMA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Panama and the Federal Republic of Germany,  
Desiring to intensify economic cooperation between both States,  
Intending to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and  
Recognizing that encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

*Article 1*

For the purposes of this Treaty:

1. The term “investments” shall comprise every kind of asset which has been invested in conformity with the law of the receiving party, in particular:

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

(b) Shares of companies and other kinds of interest;

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, trade marks, trade names, know-how and goodwill;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as an investment.

2. The term “returns” shall mean the amounts yielded by an investment for a definite period as profit, dividends, interest, licence or other fees.

3. The term “nationals” shall mean:

(a) In respect of the Republic of Panama: natural persons having that nationality under its laws;

(b) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany.

<sup>1</sup> Came into force on 10 March 1989, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 10 February 1989, in accordance with article 14 (2).

4. The term “companies” shall mean:

(a) In respect of the Republic of Panama: any juridical person as well as any company or association with or without legal personality established in conformity with the legal provisions in effect in Panama having its domicile in the territory of the Republic of Panama, except companies which are the property of the State;

(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 German areas of application of this Treaty and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit.

*Article 2*

Each Contracting Party shall, in accordance with its legislation, admit in its territory investments of capital by nationals or companies of the other Contracting Party and promote such investments as far as possible. It shall in any case accord such investments fair and equitable treatment.

*Article 3*

1. Neither Contracting Party shall subject investments in its territory owned or controlled by nationals or companies of the other Contracting Party, or activities in connection with such investments, to treatment less favourable than it accords to investments and activities of its own nationals or companies or to investments and activities of nationals or companies of any third State.

2. Such treatment shall not extend to privileges which either Contracting Party accords to nationals or companies of third States on account of its membership in a customs or economic union, a common market or a free trade area.

3. The treatment granted under this article shall not refer to privileges granted by either Contracting Party to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

*Article 4*

1. Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

2. Investments by nationals or companies of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, except for the public benefit or in “the interest of society”, and against compensation. Any expropriation measures taken shall be in accordance with the constitutional or legal procedures established to that effect. Compensation shall be equivalent to the value of the investment expropriated immediately before the date of expropriation or nationalization was publicly announced. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be actually realizable and freely transferable. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

3. 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, state of national emergency or revolt shall be accorded by the other Contracting Party a treatment no less favourable than that which that Party accords to its own nationals or companies as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

4. 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 5

Each Contracting Party agrees that, as regards investments in its territory by nationals or companies of the other Contracting Party, there shall be free and unrestricted conversion and transfer of the following payments:

- (a) Of the capital and additional amounts to maintain or increase the investment;
- (b) Of the returns;
- (c) In repayment of loans;
- (d) Of licence and other fees for the rights defined in article 1, subparagraph (d);
- (e) Of the proceeds from the sale of the whole or any part of the investment.

#### Article 6

If either Contracting Party makes 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 11, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party. 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 to be made to the Contracting Party concerned by virtue of such assignment, paragraphs 2 and 3 of article 4 as well as article 5 shall apply *mutatis mutandis*.

#### Article 7

To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraph 2 or 3 of article 4, under article 5 or under article 6 shall be made without delay at the rate of exchange effective for the agreed currency.

#### Article 8

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty contain a regulation, 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 regulation shall, to the extent that it is more favourable, prevail over this Treaty.

2. Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by agreement with nationals or companies of the other Contracting Party.

#### *Article 9*

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 latter's legislation, but it shall in no case apply to disputes or litigation arising from situations existing before its entry into force.

#### *Article 10*

Disputes between a Contracting Party and a national or company of the other Contracting Party concerning investments shall be settled amicably by the parties concerned. If an amicable settlement cannot be reached within six months, the parties concerned shall have recourse to specific procedures agreed upon by the Contracting Party and the national or company of the other Party. In the absence of such specific procedures, they shall have recourse to international arbitration, in accordance with the arbitration rules of the United Nations Commission on International Trade Law, taking into account the provisions of this Treaty.

#### *Article 11*

1. Disputes between the Contracting Parties concerning the interpretation or application of this Treaty should as far as possible be settled by the Governments of the two Contracting Parties.

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 three 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 the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant 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 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 shall make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives 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 regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

6. If both Contracting Parties are parties to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States,<sup>1</sup> the arbitral tribunal provided for above may, in consideration of the provisions of article 27, paragraph 1, of the said Convention, not be appealed to in so far as agreement has been reached between the national or company of one Contracting Party and the other Contracting Party under article 25 of the Convention. This shall not affect the possibility of appealing to such arbitral tribunal in the event that a decision of the arbitral tribunal established under the said Convention (article 27) is not complied with or in the case of an assignment under a law or pursuant to a legal transaction as provided for in article 6 of this Treaty.

#### *Article 12*

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

#### *Article 13*

With the exception of the provisions in paragraph 6 of the Protocol, which refer to air transport, this Treaty shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Republic of Panama within three months of the date of entry into force of this Treaty.

#### *Article 14*

1. This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force one month from the date of the exchange of the 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 by either Contracting Party twelve months before its expiration. After ten years, the Treaty may be denounced at any time, but shall remain in force for one year from the date of denunciation.

3. In respect of investments made prior to the date of termination of this Treaty, the provisions of articles 1 to 12 shall continue to be effective for a further period of 15 years from the date of termination of this Treaty.

DONE at Panama on 2 November 1983 in the Spanish and German languages, both texts being equally authentic.

For the Government of the Federal Republic of Germany:

DR. WALTER WELLHAUSEN  
Ambassador of the Federal Republic of Germany

For the Republic of Panama:

Lic. OYDÉN ORTEGA DURÁN  
Minister for Foreign Affairs

<sup>1</sup>United Nations, *Treaty Series*, vol. 575, p. 159.

## PROTOCOL

On signing the Treaty concerning the Encouragement and Reciprocal Protection of Investments concluded between the Republic of Panama and the Federal Republic of Germany, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Treaty:

(1) *Ad Article 1*

(a) Returns from the investment, and, in the event of their re-investment, the returns therefrom, shall enjoy the same protection as the investment.

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

(2) *Ad Article 2*

Investments made, in accordance with the laws and regulations of either Contracting Party, within the area of application of the law of that Party by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

(3) *Ad Article 3*

(a) The following shall more particularly, though not exclusively, be deemed “activity” within the meaning of article 3, paragraph 2: the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed “treatment less favourable” within the meaning of article 3: restricting the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, 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 article 3.

(b) 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 the making and carrying through of an investment; the same shall apply to nationals 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.

(c) The provisions of this article do not obligate a Contracting Party to extend tax privileges, exemptions and relief accorded only to natural persons and companies resident in its territory in accordance with its tax laws also to natural persons and companies resident in the territory of the other Contracting Party.

(4) *Ad Article 4*

(a) “Expropriation” shall mean any taking away or restriction tantamount to the taking away of any property right which in itself or in conjunction with other rights constitutes an investment.

(b) A claim to compensation shall also exist when, as a result of State intervention provided for in paragraph *a*) in the company in which the investment is made, its economic substance is severely impaired.

(5) *Ad Article 7*

A transfer shall be deemed to have been made “without delay” within the meaning of article 7 if effected within such period as is normally required for the completion of transfer formalities.

(6) Whenever goods or persons connected with the making of investments are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such transport in accordance with its laws in force.

This shall include the transport of:

(a) Goods directly intended for an investment within the meaning of this Treaty or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of this Treaty are invested;

(b) Persons travelling in connection with the making of investments.

DONE at Panama on 2 November 1983 in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic of Germany:

Dr. WALTER WELLHAUSEN  
Ambassador of the Federal Republic of Germany

For the Republic of Panama:

Lic. OYDÉN ORTEGA DURÁN  
Minister for Foreign Affairs



## EXCHANGE OF LETTERS

*I a*

Sir,

I have the honour to confirm that both Contracting Parties have agreed that, in the event that the Republic of Panama becomes a party to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, they will begin negotiations on a supplementary agreement under which the International Centre for Settlement of Investment Disputes will be competent to settle disputes between a Contracting Party and an investor. The said supplementary agreement shall be an integral part of the Treaty.

I should be grateful if you would kindly confirm your agreement with the content of this letter.

Accept, Sir, the assurances of my highest consideration.

Panama, 2 November 1983

Dr. WALTER WELLHAUSEN  
Ambassador  
of the Federal Republic of Germany

His Excellency  
Lic. Oydén Ortega Durán  
Minister for Foreign Affairs  
of the Republic of Panama

II *a*

Panama, 2 November 1983

Sir,

Both Contracting Parties have agreed that, in the event that the Republic of Panama becomes a party to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, they will begin negotiations on a supplementary agreement under which the International Centre for Settlement of Investment Disputes shall be competent to settle disputes between a Contracting Party and an investor. This supplementary agreement shall be an integral part of the Treaty.

OYDÉN ORTEGA D.  
Minister for Foreign Affairs

Dr. Walter Wellhausen  
Ambassador of the Federal  
Republic of Germany

*I b*

Panama, 2 November 1983

Sir,

I take this opportunity to inform you that measures “in the interest of society” within the meaning of article 4 (2) are those officially adopted due to a collective need.

OYDÉN ORTEGA D.  
Minister for Foreign Affairs

His Excellency  
Dr. Walter Wellhausen  
Ambassador of the Federal  
Republic of Germany

## II b

Panama, 2 November 1983

Sir,

I acknowledge receipt of your letter of 2 November 1983 which reads as follows:

[*See letter I b*]

I take this opportunity to inform you that measures “in the interest of society” within the meaning of article 4 (2) are those officially adopted due to a collective need.

Accept, Sir, the assurances of my highest consideration.

Dr. WALTER WELLHAUSEN  
Ambassador  
of the Federal Republic of Germany

His Excellency  
Lic. Oydén Ortega D.  
Minister for Foreign Affairs  
of the Republic of Panama

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