AGREEMENT BETWEEN THE REPUBLIC OF CUBA AND THE REPUBLIC OF GHANA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Cuba and the Republic of Ghana (hereinafter referred to as the "Contracting Parties")

DESIRING to intensify their economic co-operation to the mutual benefit of both States.

HAVING as their objective to create and maintain favourable conditions for investments by investors of either State in the territory of the other State, and

RECOGNISING that the promotion and reciprocal protection of investments, on the basis of this Agreement, will stimulate business initiatives in this field.

HAVE AGREED AS FOLLOWS:

Article I. Definitions

For the purposes of this Agreement:

1- "Investment" means every kind of asset invested in regard to economic activities by an investor of either Contracting Party in the territory of the other Contracting Party pursuant to the laws and regulations of the latter, and in particular, though not exclusively, includes:

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

b) Shares in and stocks and debentures of a company and any other form of participation in a company;

c) Claims to money or to any performance under contract having an economic value as well as loans connected to an investment;

d) Intellectual property rights, particularly copyrights, patents, trademarks, industrial models, technical processes, know-how, trade secrets, trade names and goodwill connected to an investment;

e) Rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the form in which investments have been made does not affect their character as investments. 2- "Investor" means any natural or legal person of either Contracting Party making investments in the territory of the other Contracting Party.

a) "natural person" means, with regard to any Contracting Party, any person having the citizenship of that State in accordance with its laws and residing permanently in the national territory;

b) "legal person" means with regard to either Contracting Party, any entity established or constituted in its territory in accordance with the laws of that Contracting Party;

3- "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, shares, dividends, royalties and fees.

4- "Territory" means the territory of the Republic of Cuba and the territory of the Republic of Ghana, as well as the maritime areas, including the sea bed and subsoil adjacent to the outer limits of the territorial waters of either territory, over which the State in question exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and create favourable conditions, in conformity with its laws and regulations in its territory, for investments by investors of the other Contracting Party, and shall admit such investments in accordance with its legislation.

2. Investment by investors of a Contracting Party shall, all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Each Contracting Party shall create favourable conditions for the granting of visa and work permits required in its territory in order that the national of the other Contracting Party can perform their activities connected to the investment.

Article 3. National and Most Favoured Nation Treatment

1. Each Contracting Party shall accord, in its territory, to investments and returns of investors of the other Contracting Party, treatment no less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

2. Each Contracting Party shall accord to investors of the other Contracting Party, in regard to the management, maintenance, use, enjoyment or disposal, in its territory, of investments a fair and equitable treatment which is not less favourable than that which it accords to its own investors or to investors of any third State.

3. For the avoidance of doubts, It is confirmed that the investments or returns of nationals or companies referred to in paragraphs (1) and (2) above are those governed by national legislation covering foreign investment and that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

4. The provisions of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:

a) Any custom union, free trade area, monetary union or any similar international agreement to which either of the Contracting Party is or may become a party.

b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflicts, a state of national emergency, civil disturbance, revolts or insurrection in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards to restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors of any third State.

Article 5. Expropriation

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measure which would be tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation"), except under the following conditions:

a) The measures are taken for a lawful or public purpose and under due process of law;

b) The measures are non-discriminatory;

c) The measures shall be accompanied by provision for payment of adequate and effective compensation. Such compensation shall amount to the market value of the investment affected immediately before the expropriation or before the measures of dispossession became public knowledge and it shall be in freely convertible currency from the Contracting Party;

d) The compensation shall be paid without delay. If the compensation is not paid within three (3) months, it shall after that date attract interest at the prevailing commercial rate as agreed upon by both Parties until the date of payment.

2. The investor affected shall be entitled to a prompt review, by the legal authorities or any independent authority of the

Contracting Party making the expropriation, of the valuation of his investment in accordance with the principles set out in this Agreement.

3. The provision of paragraph (1) of this Article shall also apply where a Contracting Party expropriates the assets of a company which is established or constituted under the laws in force in its territory and in which investors of the other Contracting Party own shares.

Article 6. Transfers

1- Each Contracting Party shall guarantee investors the unrestricted transfer or payments relating to the investment and its returns, after fulfilment of all tax obligations. The transfer shall be effected without delay, in a free convertible currency agreed upon by the parties, and shall include, in particular, though not exclusively:

a) Capital and additional amounts to maintain or increase the investment;

b) Profits, interests, dividends and other current incomes;

c) Funds in repayment of loans;

d) Royalties and fees;

e) Proceeds of sale or liquidation of the investment;

f) Incomes of natural persons subject to the laws and regulations in force in the territory of the Contracting Party where the investment is made.

2. For the purpose of this Agreement, the rates of exchange shall be the market rates of exchange applicable on the date of transfer, unless otherwise agreed.

Article 7. Subrogation

1. If either Contracting Party or its designated agency makes a payment to one of its investors under any financial guarantee against non-commercial risks it has granted in regard of an investment in the territory of the other Contracting Party, the latter shall recognise:

a) The assignment of any right or claim of that investor, under law or legal transaction, to the first Contracting Party or its designated agency, as well as,

b) That the first Contracting Party or its designated agency is entitled, by virtue of the principle of subrogation, to exercise such rights and claims of the said investor, and shall take over the obligations relating to the investment.

2. The surrogated rights and claims shall not exceed the rights and claims, which the investor is entitled to exercise.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes between an investor of a Contracting Party and the other Contracting Party, in relation to an investment in the territory of that Contracting Party shall, If possible, be settled by the disputing parties in an amicable way.

2. If such disputes cannot thus be settled within six months from the date that either party requested an amicable settlement, either Party may refer the dispute to:

a) The competent courts of the Contracting Party in the territory of which the investment has been made,

b) The Arbitration Court of the International Chamber of Commerce in Paris, or

c) An international arbitrator or ad-hoc Arbitration Court established under the Arbitration Rules of the United nations Commission on International Trade Law (UNCITRAL)

Such Rules can be modified by written agreement of the Parties in the dispute. The awards of such arbitral tribunals, courts or international arbitrators shall be final and binding.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement shall, if

possible, be settled by consultations and negotiations.

2. If the dispute cannot thus be settled within six months from the beginning of the negotiations it shall, upon request of either Contracting Party, be submitted to Arbitration Court, in conformity with the provisions of this Article.

3. The Arbitration Court shall be constituted for each individual case, as follows: each Contracting Party shall appoint, within two months from the date of the request for arbitration, one arbitrator, and these two arbitrators shall agree upon a national of a third State as Chairman of the Court (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of the appointment of the two arbitrators.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in case no other agreement is reached, invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President of the Court will be invited to make the appointments. If he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. The Arbitration Court shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator and of its representation. The cost of the Chairman, as well as the other costs will be borne in equal parts by the Contracting Parties. The Court shall determine its own procedure, and its decision will be based on the provisions of this Agreement as well as on the rules and principles of International Law.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is regulated simultaneously by this Agreement and any other international Agreement of which both Contracting Parties are members, the most favourable regulations shall apply in regard to both Contracting Parties and their investors who own investments in the territory of the other Contracting Party.

2. If the legislation of either Contracting Party entitles the investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such legislation shall, to the extent that it is more favourable, prevail over this Agreement.

Article 11. Application of this Agreement

This Agreement shall apply to investments made prior to and after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party, consistent with the latter's legislation. It shall not apply, however, to investment disputes arising before its entry into force.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement is subject to approval in conformity with the internal constitutional requirements of each Contracting Party. It shall enter into force as from the last date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective laws to this end have been completed.

2. This Agreement shall remain in force for a period of ten years. Unless either Contracting Party has given notice of termination at least one year before the date of expiry of its validity, this Agreement shall be thereafter being extended tacitly for periods of ten years.

3. In respect of investments made prior to the date of termination of this Agreement, the foregoing provisions shall continue to be effective for a period of ten years from that date.

IN WITNESS THEREOF, the undersigned, duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at.....on.....in Spanish and English languages, all texts being equally authentic.

FOR THE GOVERNEMNT OF THE REPUBLIC OF CUBA

FOR THE GOVERNEMNT OF THE REPUBLIC OF GHANA