

Agreement between the Government of French Republic and the Government of Jamaica on reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of Jamaica hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Jamaica and Jamaican investment in France;

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development;

Have agreed upon the following provisions:

Article 1. Definitions

For the purposes of this agreement:

1.1. The term "investment" means assets such as property,

rights and interests of all kinds, and in particular but not exclusively

(a) Movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights;

b) Shares, share premiums and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the contracting parties;

c) Bonds, debts and all services rendered by virtue of a contract or by law having economic value;

d) Copyrights, industrial property rights (such as patents, licenses, trademarks, models and industrial designs), technical processes, registered names and goodwill;

(e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, in the territory or maritime areas of the contracting parties.

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

Any change in the form of investment of the assets shall not affect their qualification as investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime zones the investment is made.

1.2. The term "nationals" refers to natural persons possessing the nationality of one of the Contracting Parties.

1.3. The term "companies" refers to any legal entity

(a) Incorporated in the territory of one of the contracting parties

(b) Controlled directly or indirectly by nationals of one of the contracting parties; or (c) By legal persons having their registered office in the territory of one of the contracting parties and formed in accordance with the laws of that party.

1.4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

1.5. The term "maritime areas" means the marine and submarine areas over which the Contracting Parties exercise, in accordance with International Law, sovereignty, sovereign rights or jurisdiction.

Article 2. Admission and Encouragement of Investments

Each Contracting Party shall admit and encourage, within the framework of its legislation and the provisions of this Agreement, investments made by the nationals and companies of the other Party in its territory and in its maritime zones.

Article 3. Fair and Equitable Treatment

Each Contracting Party shall, in its territory and maritime zones, accord to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, fair and equitable treatment, in accordance with the principles of international law, to the investments of the nationals and companies of the other Party, and shall ensure that the exercise of the right so accorded is not hindered in law or in fact.

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

4.1. Each Contracting Party shall, in its territory and maritime zones, apply to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than the treatment accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favoured Nation, whichever is more favourable. In this connection, nationals authorized to work in the territory and maritime zones of one of the contracting parties shall be entitled to enjoy, in connection with the exercise of their professional activities, material facilities no less favourable than those enjoyed by the nationals of that contracting party or the nationals of the most favoured nation.

4.2 This treatment shall not, however, extend to the privileges which a contracting party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

Article 5. Dispossession

5.1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime zones of the other Contracting Party.

5.2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures (hereinafter referred to as "dispossessionary measures") the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime zones, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

5.3. Any dispossessionary measures that may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which shall be calculated on the basis of the market value of the investments concerned immediately before the announcement of the measures. Where there is no market as a basis for determining the value of the investment, compensation shall be calculated on the basis of a fair and equitable assessment of the value of the investment. In determining such compensation, fair weight shall be given to all factors, including any threat of dispossession, which would have affected that value prior to the announcement of the measures by the authorities.

5.4. Such compensation, the amount thereof and the manner of payment shall be fixed not later than the date of dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the current market interest rate.

5.5. The nationals or companies of one of the contracting parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime zones of the other contracting party shall receive from the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6. Transfers

6.1. Each contracting Party, in whose territory or maritime zones investments have been made by nationals or companies of the other contracting Party, shall guarantee to such nationals or companies the right to the free transfer

(a) of income;

(b) payments made for the repayment of loans contracted in accordance with the regulations in force;

(c) the proceeds of the total or partial sale or liquidation of the investment, including capital gains on the investment

d) any compensation for dispossession or loss provided for in Article 5 above.

6.2. Nationals of each contracting party who have been authorized to work in the territory or maritime areas of the other contracting party in connection with an investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

6.3. The transfers referred to in the preceding paragraphs shall be made without delay at the rate of exchange applicable on the date of the transfer.

Article 7. Disputes between a Contracting Party and an Investor

1. Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall be settled amicably between the two Parties concerned.

2. If such a dispute has not been settled within six months from the time it was raised, it shall be submitted at the request of either Party

(a) To arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on March 18, 1965; or

(b) To the courts of the Contracting Party in which the investment was made.

3. In the event of disagreement as to the choice of procedure described in paragraph 2 of this Article, the dispute shall be submitted to arbitration in accordance with paragraph 2(a) of this Article.

4. The choice of one of the procedures described in paragraph 2 is exclusive of the other procedure.

Article 8. Guarantee

8.1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad it may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

8.2. Investments of nationals and companies of one of the Contracting Parties in the territory or maritime zones of the other Party may only obtain the guarantee referred to in the preceding paragraph if they have first been approved or registered by the latter Party, if such approval or registration was required at the time.

Article 9. Subrogation

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zones of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the ICSID or to pursue actions brought before it until the proceedings have been completed.

Article 10. Specific Commitment

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking insofar as it contains provisions more favourable than those provided for in this Agreement.

Article 11. Disputes between Contracting Parties

11.1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

11.2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration tribunal.

11.3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and the two members so appointed shall select a national of a third State who, by approval of both Contracting Parties, shall be appointed chairman of the tribunal. All members shall be appointed within two months of the date on which one Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.

11.4. If the time limits set forth in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any applicable agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

11.5. The arbitration tribunal shall take its decisions by a majority vote.

Such decisions shall be final and binding on the Contracting Parties.

The Tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the two Governments.

Article 12. Entry Into Force, Duration and Termination

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of ten years and shall remain in force after that period, unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of fifteen years.

For the Government of the French Republic:

Michel Sapin

For the Government of Jamaica:

Hugh Small

PROTOCOL

At the time of the signature of the Agreement this same day, between the Government of the French Republic and the Government of Jamaica on the reciprocal encouragement and protection of investments, the Contracting Parties have also agreed on the following provisions, which shall form an integral part of the Agreement.

With respect to Article 3.

(a) The obligation to ensure that the exercise of fair and equitable treatment is not "impeded in law or in fact" applies, *inter alia*, to measures relating to the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, to the sale and transportation of products within the country and abroad, and to all measures having a similar effect;

(b) Within the framework of their domestic legislation, the contracting parties shall give sympathetic consideration

(b) Within the framework of their domestic legislation, the Contracting Parties shall give sympathetic consideration to applications for entry and authorization to reside, work and travel submitted by nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

Done in Paris, on 25 January 1993, in two originals, each in the French and English languages, both texts being equally authentic.

For the Government of the French Republic:

MICHEL SAPIN

For the Government of Jamaica:

HUGH SMALL