

Agreement between the Government of Jamaica and the Government of the Swiss Confederation for the Reciprocal Promotion and Protection of Investments

Signed on 11 December 1990

Enter into force by exchange of notes on 21 November 1991

(State on 24 August 1999)

Article 1. Definitions

For the purposes of this Agreement:

(a) Are nationals of one Contracting Party natural persons who, according to the law of that State, are considered to be its citizens.

(b) "companies are:

(i) As regards the Swiss Confederation, legal persons or companies effectively controlled by nationals of persons who possess a substantial part in title.

(ii) As regards Jamaica, registered firms or associations, companies incorporated or constituted in accordance with the legislation in force in Jamaica.

(c) The term "investment" includes all categories of assets and in particular:

(i) Movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

(ii) The actions, certificates or other forms of participation in companies;

(iii) Monetary claims and rights to any performance under contract having a financial value;

(iv) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indications of source and appellations of origin), know-how and goodwill;

(v) The concessions conferred by law or under contract, including extract concessions to search for or exploit natural resources as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

(d) The term means the returns derived from an investment amounts and shall include in particular, though not exclusively, interests, capital gains, profits, dividends, royalties or fees.

Article 2. Investment Promotion and Admission

(1) Each Contracting Party shall promote as far as possible investments by nationals or companies of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall endeavour, in accordance with its laws, to grant the necessary permits in connection with such investments and with the carrying out of licensing agreements, technical, commercial or administrative assistance.

Article 3. Treatment of Investments

(1) Investments of nationals or companies of each Contracting Party shall at all times be subject to a fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party. No Contracting Party will in any way by unreasonable or discriminatory measures affect the management, maintenance, use, enjoyment, increase, or disposal of investments in its territory of nationals or companies of the other contracting party.

(2) Neither Contracting Party shall in its territory or investments accord to nationals or companies of the other Contracting Party a treatment less favourable than that which it accords to returns of investments or its own nationals or companies or returns to investment or of nationals or companies of any third State.

(3) If a Contracting Party accords special advantages to nationals or companies of any third State by virtue of agreements establishing customs unions, or economic unions, or similar institutions on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals or companies of the other contracting party.

(4) The special incentives granted by a contracting party to its own nationals or companies or firms within the framework of its development policy in order to stimulate the creation of local industries, such as tax concessions, are deemed to be compatible with the provisions of this article, provided they do not significantly affect the investments and activities of nationals and companies of the other contracting party in connection with an investment.

Article 4. Transfers

(1) Each Contracting Party in whose territory of nationals or companies of the other Contracting Party has made investments will accord to such nationals or companies the free transfer of:

(i) Investment income;

(ii) The amounts relating to loans or other contractual obligations related to the investment;

(iii) The proceeds of the sale of or the partial or total liquidation of the investment, including possible capital appreciation.

(2) Notwithstanding the provisions of paragraph (1) of this article, the free transfer shall be subject to the following conditions:

(i) The free transfer of the payments referred to in subparagraphs (i), (ii) and (iii) above, subject to the approval of investment in accordance with the law in force at the time when the investment has been made, if such approval is required;

(ii) As regards subparagraph (ii) above, when benefits deriving from loans or other contractual obligations shall be carried out periodically, the prior consent of the competent authorities may be required;

(iii) As regards subparagraph (iii) above, in the event of exceptional difficulties balance of payments, and in the case of large sums, transfers may be limited to a maximum of 33 1 / 3 per cent per year.

Article 5. Binding Acquisition

(1) Neither Contracting Party may acquire coercively, i.e. take any measures of expropriation or nationalization or any other measures having the same nature or the same effect against investments belonging to nationals or companies of the other contracting party except for reasons of public interest and provided that such measures are consistent with the legal requirements and provide for payment of adequate compensation. The amount of compensation which shall be effectively realizable and shall include interest, shall be paid without delay and be freely transferable.

(2) Notwithstanding the provisions of paragraph (1) of this article as regards the transferable nature of compensation in cases of exceptional difficulties balance of payments, and where compensation constitutes a significant amount, a contracting party may restrict the transfer until a maximum of 33 1 / 3 per cent per year.

Article 6. Compensation for Losses

Nationals or companies of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with Article (3) of the present Agreement as regards restitution, indemnification, compensation or other relevant counterpart.

Article 7. Investments Made Prior to the Agreement

This Agreement shall also apply to investments in the territory of a Contracting Party in accordance with its laws and regulations, by nationals or companies of the other contracting party prior to the entry into force of the present Agreement.

Article 8. The Subrogation

If a Contracting Party makes a payment to a national or a company by virtue of a guarantee has accorded it in connection with an investment made in the territory of the other contracting party, the latter recognise the assignment of any right or title of the national or company to the first Contracting Party and the subrogation in such a right or title.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and a national or company of the other contracting party and without prejudice to the provisions of article 10 of this Agreement (disputes between contracting parties), consultations will take place between the parties concerned.

(2) If these consultations do not resolve within 12 months from the date of the request to enter into consultations, the Contracting Party and a national or company of the other Contracting Party shall agree on the submission of the dispute to conciliation or arbitration respectively in accordance with articles 28 and 36 of the Washington Convention of 18 March 1965 pour the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to as the Convention) ciaprès .1 pour the Settlement of Investment Disputes between States and Nationals of Other States (ciaprès referred to as the Convention).

(3) If under subparagraph (2) of this article the Contracting Party and a national or company of the other contracting party agree to refer the dispute to conciliation in accordance with article 28 of the Convention, and the dispute is submitted.

(4) If under subparagraph (2) of this article the Contracting Party and a national or company of the other contracting party agree to submit the dispute to arbitration pursuant to article 36 of the Convention, either Contracting Party may require as a condition of its consent to arbitration, that the administrative or judicial remedies should be exhausted.

(5) If under subparagraph (2) of this article the Contracting Party and a national or company of the other contracting party cannot reach an agreement within three months from the end of the period mentioned in paragraph (2) of this article on the submission of the dispute to conciliation or arbitration respectively in accordance with articles 28 and 36 of the Convention, the Contracting Parties shall, for the purposes of article 36 of the Convention, consent to a national or company of the other Contracting Party who submits the dispute to arbitration pursuant to that article, in so far as the exhaustion of local remedies in accordance with international law.

(6) The Contracting Party which is a party to the dispute may, at any stage of the proceedings or enforcement of an award an examination of the fact that the national or company which is the other party to the dispute has received pursuant to an insurance contract compensation for all or part of its losses.

(7) A company which is incorporated or constituted under the law in force in the territory of the Contracting Party and which, before the birth of diffé-rend, is controlled by nationals or companies of the other Contracting Party, shall be treated in accordance with the provisions of article 25 (2) (b) of the Convention, as a company of the latter.

(8) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless

(a) The Secretary-General of the Centre or a conciliation commission or an arbitral tribunal established by the Centre decides that the dispute is not within the jurisdiction of that State; or

(b) The other contracting party does not comply with the award rendered by an arbitral tribunal.

Article 10. Disputes between Contracting Parties

(1) Disputes between contracting parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each

Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. the Tribunal may decide, however, in its award by one of the two Contracting Parties shall bear a higher proportion of costs and this decision shall be binding on both contracting parties.

(8) The decisions of the Tribunal, which shall be taken by a majority of votes, shall be final and binding for each Contracting Party.

Article 11. Additional Obligations

(1) If the legislation of either Contracting Party shall accord to investments of nationals or companies of the other contracting party to more favourable treatment than that provided for by the present Agreement, such legislation on the latter shall prevail to the extent that it is more favourable.

(2) Each Contracting Party shall observe any other obligation assumed by it in respect of investments made in its territory by nationals or companies of the other contracting party.

Article 12. Entry Into Force , Termination

(1) This Agreement shall enter into force on the day on which the two Governments that have notified the constitutional formalities required for the conclusion and entry into force of this Agreement have been completed and shall remain valid for a period of ten years. it shall remain in force until the expiration of twelve months from the date on which either Contracting Party has notified the other denunciation.

(2) In the event of termination of this Agreement, the provisions of articles 1 to 11 shall apply for a period of ten years for investments made prior to the termination of the Agreement.

The Swiss Federal Council and the Government of Jamaica

Desiring to intensify economic cooperation between the two States on the basis of international law and mutual confidence,

Intending to create and maintain favourable conditions for investment in the two States,

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States;

Have agreed as follows: