Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Ghana concerning the Promotion and Protection of Investments

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of Ghana,

DESIRING to create favourable conditions for investments in both States and to intensify the co-operation between private enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

(1)

(a) The term »investment« shall mean every kind of asset connected with economic activities acquired for the purpose of establishing lasting economic relations between an investor and an enterprise irrespective of the legal form including joint ventures and including any share of the capital to which investors are entitled as well as any capital appreciation and in particular, but not exclusively:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know-how;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(vi) Goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party, shall be treated as an investment.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement

(b) The term »investments« covers all investments made in the territory of a Contracting Party by investors of the other Contracting Party before or after the entry into force of this Agreement.

(2) The term »returns« shall mean the amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

Such amounts, and in case of reinvestment amounts yielded from the reinvestment, shall be given the same protection as the investment.

(3) The term »investor« shall mean with regard to either Contracting Party:

(a) Natural persons having status as nationals of either Contracting Party, according to its law.

(b) Any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(4) The term »territory« shall mean:

(a) In respect of Denmark: the territory under its sovereignty and the sea and submarine areas over which Denmark exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction. Subject to Article 12 the present Agreement shall not apply to the Faroe Islands and Greenland;Article 12 the present Agreement shall not apply to the Faroe Islands and Greenland;

(b) In respect of Ghana: the present territory of the Republic of Ghana including the territorial sea and any maritime area situated beyond the territorial sea of Ghana which has been or might in the future be designated, under the national law of Ghana in accordance with international law, as an area within which Ghana may exercise rights with regard to the seabed and subsoil and the natural resources.

(5) The term »Contracting Party« shall mean the Kingdom of Denmark or the Republic of Ghana as the context requires.

Article 2. Promotion of Investment

Each Contracting Party shall encourage and create favourable conditions including facilitating the establishments of representative offices for the investor of the other Contracting Party to invest capital in its territory, and, subject to its rights to exercise powers conferred by its laws, shall admit such capital.

Article 3. Protection of Investment

(1) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

(3) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 4. National Treatment and Most Favoured Nation Provisions

(1) Neither Contracting Party shall in its territory subject investments made by investors of the other Contracting Party or returns of such investments to treatment less favourable than that which it accords to investments or returns of its own investors or any third State (whichever of these standards is more favourable from the point of view of the investor).

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment or returns, to treatment less favourable than that which it accords to its own investors or to investors of any third State (whichever of these standards is the more favourable from the point of view of the investor).

Article 5. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, regional economic organisations, or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as »expropriation«) in the territory of the other Contracting Party unless the following conditions are complied with:

(a) The measures are taken for a public purpose related to the internal needs of that Contracting Party, on a non-discriminatory basis and under due process of law;

(b) The measures are accompanied by provision for the payment of compensation amounting to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier;

(c) Payments of compensation shall be made without undue delay and shall be freely transferable to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants; and

(d) If the compensation is not paid within six months after its determination, it shall from that date attract interest at the normal commercial rate until the date of payment;

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to promote determination of the amount of compensation either by law or by agreement between the parties and to prompt review, by a judicial or other independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set out in paragraph (1) of this Article, without prejudice to the procedure contained in Article 10 of this Agreement.

Article 7. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State (whichever of these standards is the more favourable from the point of view of the investor). Resulting payments shall be freely transferable.

Article 8. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall, subject to the right of each Contracting Party to exercise equitably, in good faith and on a non-discriminatory basis the powers conferred by its laws, allow without delay, which in any case shall not be later than six (6) months the transfer of:

(a) The invested capital or the proceed of total or partial liquidation or alienation of the investment;

(b) The returns realized;

(c) The payments made for the reimbursement of the credits for investments and interests due;

(d) An approved portion of the earnings of the expatriates who are allowed to work in an investment made in the territory of the other Contracting Party.

(2) Transfers of currency pursuant to Article 6, 7 and section (1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article 9. Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or any legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those

rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 10. Settlement of Disputes between an Investor and a Host State

(1) Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if either party to the dispute so wishes.

(2) Disputes concerning investments over which governmental action has been taken before the coming into force of this agreement shall not be the subject matter of settlement under this agreement.

(3) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) The International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention of the Settlement of Investment Disputes between states and nationals of other states, opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings): or

(b) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.Arbitration Rules of the United Nations Commission on International Trade Law.

(4) If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit it to arbitration under the arbitration rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these rules.

Article 11. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

(2) If such a dispute cannot be settled within three months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within any of the periods specified the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any 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 be invited to 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 International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

(6) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 12. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter in force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force have been fulfilled.

Article 13. Consultations

The representatives of the Contracting Parties shall, when ever needed, hold meeting in order to review the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 14. Entry Into Force

This agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 15. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from that date.

Done in duplicate in Accra on January 13, 1992 in the Danish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

For the Government of the Kingdom of Denmark Uffe Ellemann-Jensen

For the Government of the Republic of Ghana