

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

The Government of the Republic of Cuba and the Government of the Kingdom of Denmark, hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for investments in both States and to intensify the economic relations between them, particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party 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) The term "investment" means every kind of asset and shall include in particular, but not exclusively:

(i) Tangible and intangible, movable and immovable property, as well as any other rights such as leases, mortgages, liens, pledges, guarantees and any other similar rights,

(ii) A company or business enterprise, or shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise,

(iii) Reinvestments,

(iv) Claims to money and claims to performance pursuant to related contracts having an economic value,

(v) Industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and any other similar rights,

(vi) Concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

(2) A change in the form in which assets are invested, does not affect their character as investments as long as it is in accordance with the law of the recipient Contracting Party.

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

(4) Returns, and in case of reinvestment amounts yielded from the reinvestment, shall be given the same protection as the investment in accordance with the provisions of this Agreement.

(5) "Investor" means:

(a) With regard to the Republic of Cuba:

Natural persons having the citizenship of, and who are permanently residing in Cuba in accordance with its laws.

With regard to the Kingdom of Denmark:

Natural persons having the citizenship of, or who are permanently residing in Denmark in accordance with its laws.

(b) With regard to each Contracting Party:

Any entity established in accordance with, and recognised as a legal person by the law of that Contracting Party, such as companies, 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.

(6) The term "territory" means with respect to each Contracting Party: The territory under its sovereignty as well as maritime zones and continental shelf over which the Contracting Party exercises sovereign rights and jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation and administrative practice and encourage such investments, including facilitating the establishment of offices.

(2) Investments of investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. 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 3. Transparency

(1) Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures as well as international agreements which may affect the operation of the Agreement.

(2) Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph (1).

Article 4. Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third State, whichever is the more favourable to the investor.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third State, whichever of these standards is the more favourable to the investor.

(3) Paragraphs 1 and 2 applies only to investments made in accordance with the laws and regulations on investments of each Contracting Party in force at the time of the investment.

Article 5. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of each 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) Membership of any existing or future Regional Economic Integration Organisation or customs union of which one 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 and Compensation

(1) Investments of investors of each Contracting Party shall not be nationalised, expropriated or subjected to measures having similar effect as nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the

other Contracting Party except for expropriations made for the public, national or social necessity, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.

(2) Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "valuation date").

(3) Such fair market value shall be calculated in a freely convertible currency agreed on by the Parties, on the basis of the market rate of exchange existing for that currency on the valuation date. Compensation shall be paid promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(4) The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, in particular of the valuation of its investment and of the payment of compensation, in accordance with the principles set out in section 1 of this Article.

(5) When a Contracting Party expropriates the assets of a company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of the other Contracting Party have an investment, including through shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

Article 7. 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 conflict, a state of national emergency, or civil disturbances 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 to the investor.

(2) Without prejudice to section 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that section, suffers a loss in the area of another Contracting Party resulting from

(a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or

(b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 8. Transfer of Capital and Returns

(1) Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow the free transfer into and out of its territory of:

(a) The initial capital and any additional capital for the maintenance and development of an investment;

(b) The invested capital or the proceeds from the sale or liquidation of all or any part of an investment;

(c) Interests, dividends, profits and other returns realised;

(d) Payments made for the reimbursement of the credits for investments, and interests due;

(e) Payments derived from rights enumerated in Article 1, section 1, v of this Agreement;

(f) Unspent earnings and other remunerations of personnel engaged in connection with an investment;

(g) Compensation, restitution, indemnification or other settlement pursuant to Articles 6 and 7.

(2) Transfers of payments under section 1 of this Article shall be effected without delay and in a freely convertible currency in which the investment was made or any other freely convertible currency agreed on by the Parties.

(3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to investments from abroad (inward investments).

Article 9. Subrogation

If one Contracting Party or its designated agency makes a payment to its own investors under a guarantee or insurance contract against noncommercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

- (a) The assignment, whether under the law or pursuant to a legal transaction, of any right or claim by the investor to the former Contracting Party or to its designated agency and
- (b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor.

Article 10. Disputes between a Contracting Party and an Investor

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, as far as possible, be settled amicably.

(2) If such a dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of three months, investor shall be entitled to submit the case either to:

- (a) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), or
- (b) The Court of Arbitration of the International Chamber of Commerce.

Article 11. Disputes between the Contracting Parties

(1) If any dispute arises between the Contracting Parties concerning the interpretation and application of this Agreement, the Contracting Parties shall, as far as possible, try to settle any such dispute through negotiations.

(2) If such a dispute cannot be settled within three months from the beginning of the dispute, 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:

(a) 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.

(b) 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. The chairman should be a national of a third State with which both Contracting Parties have diplomatic relations.

(c) 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. The arbitral tribunal determines its own procedure.

(d) The decisions of the tribunal are final and binding upon the Contracting Parties to the dispute.

(e) 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. Consultations

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations 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 13. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of this Agreement. It shall, however, not be applicable to divergences or disputes which have arisen prior to its entry into force.

Article 14. 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 into force when the Contracting Parties have notified each other in writing through diplomatic channels that the constitutional requirement for the entry into force have been fulfilled.

Article 15. Territorial Extension

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 16. Entry Into Force

The Contracting Parties shall notify each other in writing through diplomatic channels when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of the Exchange of Notes.

Article 17. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until either Contracting Party notifies in writing through diplomatic channels the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.

(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 13 shall remain in force for a further period of ten years from that date.

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

DONE in two originals at Copenhagen on February 19, 2001 in the Spanish, 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 Republic of Cuba

For the Government of the Kingdom of Denmark

The following provisions shall be regarded as an integral part of the Agreement between the Government of the Republic of Cuba and the Government of the Kingdom of Denmark concerning the Promotion and Reciprocal Protection of Investments:

Ad Article 10 (2):

In case both Contracting Parties become parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the ICSID Convention") investor shall be entitled to submit the case to international arbitration of the International Centre for Settlement of Investment Disputes established pursuant to the said Convention.

For the Government of the Republic of Cuba

For the Government of the Kingdom of Denmark