

# **AGREEMENT for the reciprocal promotion and protection of investments between Spain and Jamaica**

Spain and Jamaica, hereinafter referred to as "the Contracting Parties",

Desiring to enhance economic cooperation for the mutual benefit of both countries, Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party, and

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "investor" means any national or any company of either Contracting Party who makes investments in the territory of the other Contracting Party:

- a) The term "national" means natural persons who, according to the law of that Contracting Party, are considered to be its nationals.
- b) The term "company" means juridical persons or any other legal entity constituted or otherwise duly organized under the applicable law of that Contracting Party and having its seat in the territory of that same Contracting Party, such as corporations, partnerships or business associations.

2. The term "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party in particular, although not exclusively, the following:

- a) Movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;
- b) A company or business enterprise or shares in and stocks and debentures of a company or any other form of participation in a company or business enterprise;
- c) Claims to money or to any performance under contract having economic value and associated with an investment;
- d) Intellectual property rights; technical processes, know-how and goodwill;
- e) Rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that such a change has been made in conformity with the laws and regulations of the host Contracting Party.

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Investments made in the territory of one Contracting Party by any company of that same Contracting Party that is actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

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

4. The term "territory" designates the land territory, the internal waters and the territorial waters of each of the Contracting

Parties as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial sea of each of the Contracting Parties over which they have or may have jurisdiction and/or sovereign rights in accordance with international law.

## **Article 2. Promotion and Admission of Investments**

- 1 . Each Contracting Party shall within its territory promote, as far as possible, investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws and regulations.
- 2 . In order to encourage mutual investment flows, the Contracting Parties shall consult with each other on the most effective ways to promote investments.
- 3 . When a Contracting Party has admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons, regardless of their nationality.

## **Article 3. Protection**

- 1 . Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law.
- 2 . Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Contracting Party.

## **Article 4. National Treatment and Most Favoured Nation Treatment**

- 1 . Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State whichever is more favourable to the investor concerned.

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- 2 . Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, treatment no less favourable than that which it accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned.
- 3 . The treatment granted under paragraphs and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its membership of, or association with, any existing or future free trade area, customs union, economic union, monetary union or other regional economic integration organization. paragraphs and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its membership of, or association with, any existing or future free trade area, customs union, economic union, monetary union or other regional economic integration organization.
- 4 . Measures that have to be taken for reasons of public security and order or public health shall not be deemed "treatment less favourable" within the meaning of this Article.

## **Article 5. Expropriation**

- 1 . Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except in the public interest, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation. . Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except in the public interest, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.

2 . Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or before the impending expropriation was publicly announced, whichever is earlier (hereinafter referred to as the "valuation date"). In determining market value, due account shall be taken of any factors that might have affected the investment before the expropriation was publicly announced.

3 . Such fair market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.

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

## **Article 6. 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 to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

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2 . Notwithstanding paragraph (1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from: paragraph (1), an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other 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 by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

## **Article 7. Transfers**

1 . Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of all payments relating to their investments, in particular, though not exclusively:

- a) The initial capital and additional amounts to maintain or increase the investment;
- b) Investment returns, as defined in Article 1; Article 1;
- c) Funds in repayment of loans related to an investment;
- d) Compensations provided for under Articles 5 and 6; Articles 5 and 6;
- e) Proceeds from the total or partial sale or liquidation of an investment;
- f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment; earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) Payments arising out of the settlement of a dispute,

2 . Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

## **Article 8. Application of other Provisions**

1 . If the legislation of either Contracting Party or obligations under international law existing at present or established

hereafter between the Contracting Parties in addition to this Agreement contain a provision whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such provision shall, to the extent that it is more favourable, prevail over this Agreement.

2 . More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3 . Nothing in this Agreement shall affect the provisions established by international Agreements relating to the intellectual property rights in force at the date of its signature.

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## **Article 9. Subrogation**

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. The subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1 . Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels. . Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2 . If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.

3 . The arbitral tribunal shall be set up in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third country as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the two Contracting Parties informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4 . If within the periods specified in paragraph 3 of this Article 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 the 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. paragraph 3 of this Article 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 the 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 issue its decision on the basis of respect for the law, the provisions contained in this Agreement or in other agreements in force between the Contracting Parties, as well as the generally accepted principles of international law.

6 . Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.

7 . The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties.

8 . Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties. borne in equal parts by the two Contracting Parties.

## **Article 11. Disputes between One Contracting Party and Investors of the other Contracting Party**

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 six months from written notification of a claim, be submitted at the choice of the investor to:

- the competent court of the Contracting Party in whose territory the investment was made; or
- an arbitral tribunal constituted under the applicable law of the Contracting Party; or
- an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law; or
- the International Centre for Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March 1965.

## **Article 12. Scope of Application**

- 1 . This Agreement shall be applicable to investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party.
- 2 . The treatment granted under this Agreement shall not apply to tax matters.

## **Article 13. Entry Into Force, Duration and Termination**

- 1 . This Agreement shall enter into force on the date on which the Contracting Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and shall be automatically renewed for consecutive periods of two years.
- 2 . Either Contracting Party may terminate this Agreement by prior notification in writing, six months before the date of its expiration.

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- 3 . With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

Done in duplicate in the English and Spanish languages, both texts being equally authentic, in Kingston this 13th day of March 2002.

For Spain:

RAFAEL JOVER Y DE MORA-FIGUEROA

Ambassador of Spain

For Jamaica:

K. D. KNIGHT

Minister of Foreign Affairs and Foreign Trade