

Agreement between the Government of Costa Rica and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Reciprocal Protection of Investments

Article I. Definitions

For the purposes of this Agreement:

(a) The term "investments" means all kinds of property and in particular, but not exclusively, includes:

- i) Movable and immovable property and other rights in rem, such as mortgages and pledges.
- ii) Shares, securities and debentures of corporations or interests in the assets of such corporations.
- iii) Claims on securities or on the execution of a contract having financial value.
- iv) Intellectual property rights and intangible rights that are covered by good faith.
- v) Concessions of a commercial nature granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources.

b) The term "income" means sums derived from a capital investment and in particular, but not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

c) The term "domestic" means:

- i) In relation to the United Kingdom: natural persons deriving their status as nationals of the United Kingdom under the laws in force in the United Kingdom.
- ii) In relation to the Republic of Costa Rica: natural persons deriving their status as nationals of the Republic of Costa Rica by virtue of the provisions of the Constitution.

d) The term "companies" means:

- i) In relation to the United Kingdom: companies or associations incorporated or formed under the laws in force in any part of the United Kingdom or in any territory to which this Convention extends under the provisions of Article XI.
- ii) In relation to the Republic of Costa Rica: Business corporations as defined by the laws in force in the territory of Costa Rica.

e) The term "territory" means:

- i) In relation to the United Kingdom: Great Britain and Northern Ireland and any territory to which this Convention extends under the provisions of Article XI.
- ii) In relation to the Republic of Costa Rica: it is comprised between the Caribbean Sea, the Pacific Ocean and the Republics of Nicaragua and Panama. The limits of the Republic are those determined by the Cañas-Jerez Treaty of April 15, 1858, ratified by the Cleveland Award of March 22, 1888, with respect to Nicaragua and the Echandi Montero - Fernández Jaén Treaty of May 1, 1941 with respect to Panama. Cocos Island, located in the Pacific Ocean, is part of the national territory.

Article II. Promotion and Protection of Investments

1. Each Party to this Convention shall encourage and create favorable conditions for nationals or companies of the other Contracting Party to make investments of capital within its respective territory, and shall, in accordance with its right to exercise the powers conferred by its respective laws, admit such capital.

2. Capital investments of nationals or companies of each 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. Neither Contracting Party shall in any way impair, by immoderate or discriminatory measures, the management, maintenance, use, enjoyment or disposal in its territory of investments of capital of nationals or companies of the other Contracting Party. Each Contracting Party shall comply with any other commitments it may have entered into with respect to investments of capital of nationals or companies of the other Contracting Party.

3. The encouragement of investment within the framework of this Agreement shall be consistent with the investment objectives and plans of the recipient country in accordance with the priorities expressed in its development plans and policies. In the event of the enactment of new investment legislation by either Contracting Party, investments thereafter made in its territory by nationals or companies of the other Contracting Party shall be established in accordance with the new legislation.

Article III. National Treatment and Most-favoured-nation Clause

1. Neither Contracting Party shall subject in its territory investments and income of nationals and companies of the other Contracting Party to treatment less favorable than that accorded to investments of capital and income of its own nationals and companies or to investments of capital and income of nationals and companies of any third State.

2. Neither Contracting Party shall subject in its territory nationals and companies of the other Contracting Party, in respect of the management, use, enjoyment or disposal of their capital investments, to treatment less favourable than that accorded to its own nationals and companies or to nationals and companies of any third State.

Article IV. Compensation for Losses

1. Nationals or companies of a contracting party who suffer losses on their capital investments in the territory of the other contracting party as a result of war or other armed conflict, revolution, state of national emergency, rebellion, insurrection, or mutiny in the territory of the other contracting party shall not be treated less favorably by the other contracting party than its own nationals and companies or the nationals and companies of any other State in respect of restitution, compensation, adjustment or other payments.

2. Without prejudice to paragraph (1) of this Article, nationals or companies of a contracting party who suffer loss in situations referred to in that paragraph in the territory of the other contracting party as a result of:

(a) The requisition of property by forces or authorities.

(b) The destruction of property by the forces or authorities not occasioned as a result of fighting or necessitated by the exigencies of the situation, shall grant them a refund or appropriate compensation. The corresponding payments shall be freely transferable.

Article V. Expropriation

1. Capital investments of nationals or companies of a Contracting Party may not be nationalized, expropriated or subjected in the territory of the other Contracting Party to measures which in their effect amount to nationalization or expropriation (hereinafter referred to as "expropriation") except for reasons of public use related to the internal needs of that Contracting Party and in return for prompt, adequate and effective compensation. Such compensation shall be equivalent to the market value of the expropriated capital investments at the time when the expropriation became publicly known to be imminent, shall include interest at the normal commercial rate up to the date on which payment is made, shall be prompt, effectively realizable and freely transferable. The national or company concerned shall be entitled, under the laws of the Contracting Party effecting such expropriation, to a prompt review by the judicial or other independent authorities of such Contracting Party of the causes of such expropriation and to the evaluation of its capital investments in accordance with the principles set forth in this paragraph.

2. In the event that a Contracting Party expropriates the property of a company incorporated or constituted under the laws in force in any part of its territory and in which nationals or companies of the other Contracting Party hold shares, the said Contracting Party shall satisfy itself that the provisions of paragraph (1) of this Article are complied with to the extent necessary to ensure prompt, adequate and effective compensation in respect of the capital investments of the nationals or companies of the other Contracting Party who are the owners of such shares.

Article VI. Repatriation of Capital and Investment Income

Each contracting party shall, in respect of capital investments, guarantee to nationals or companies of the other contracting

party the free transfer of their investments and income therefrom to the country in which they reside, without prejudice to the right of each contracting party, in exceptional cases due to a balance of payments difficulties and for a limited period, to exercise equitably and in good faith the powers conferred by their respective laws. Transfers shall be effected without delay in the convertible currency in which the capital investment was originally made or in any other convertible currency agreed upon by the investor and the contracting party concerned.

Article VII. Exceptions

The provisions of this Convention, as regards treatment no less favorable to be accorded to nationals or companies of either Contracting Party or of any third State, shall not be so construed as to oblige a Contracting Party to accord to nationals or companies of the other Contracting Party the benefits of any preferential treatment or privilege arising out of:

- a) Any existing or future customs union or economic integration convention, or any similar international convention to which either Contracting Party has acceded or may eventually accede.
- b) Any international convention or agreement which relates wholly or mainly to taxation or any other mainly to taxation or any domestic legislation which relates wholly or mainly to taxation.

Article VIII. Submission of the Dispute to the International Centre for Settlement of Investment Disputes

1. Each Contracting Party to this Convention agrees to submit to the International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") by conciliation or by arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on March 18, 1965, any legal dispute arising between such Contracting Party and a national or company of the other Contracting Party with respect to the latter's investments in the territory of the former.

A company incorporated or formed under the laws in force in the territory of one of the Contracting Parties and of which prior to such dispute the majority of the shares are owned by nationals or companies of the other Contracting Party shall, in accordance with paragraph 2 (b) of Article XXV of the said Convention and for the purposes of the Convention, be accorded treatment on a parity with that of a company of the other Contracting Party. If such a dispute arises, and no settlement of the dispute can be reached within three months between the parties by application of local measures or otherwise, in which case, if the national or company concerned has also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration in accordance with the Convention, either party may institute proceedings by a request to that effect addressed to the Secretary-General of the Centre in accordance with the provisions of Articles XXVIII and XXXVI of the Convention.

In case of disagreement as to whether conciliation or arbitration is the best procedure, the national or company concerned shall have the right to choose. The Contracting Party to the dispute may not, at any stage of the proceedings or of the enforcement of an award, raise as an obstacle the fact that the national or company party to the dispute has received, under an insurance contract, indemnification in respect of part or all of its losses.

2. No Contracting Party may pursue through diplomatic channels any dispute which has been submitted to the Centre unless:

- (a) The Secretary-General of the Centre, or a Conciliation Commission or Arbitral Tribunal constituted by it, decides that the dispute is outside the jurisdiction of the Centre.
- (b) The other Contracting Party fails to abide by or comply with an award rendered by an arbitral tribunal.

Article IX. Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation or application of this Convention shall, as far as possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled in this way, it shall, at the request of one or other of the Contracting Parties, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted for each individual case in the following manner; each Contracting Party shall, within two months of receipt of the request for arbitration, appoint one member of the tribunal. The two members shall then select a national of a third State who, approved by both Contracting Parties, shall be appointed chairman of the tribunal. The chairman shall be appointed within two months of the date of appointment of the above two members.

4. If the necessary appointments have not been made within the time limits provided for in paragraph (3) of this Article, either Contracting Party may, failing other arrangements, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of one of the two Contracting Parties or is otherwise unable to perform this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of one of the Contracting Parties or if he is also unable to perform this function, the member of the International Court of Justice next in rank to him who is not a national of one of the two Contracting Parties shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall take its decision by majority vote. Such a decision shall be binding on both Contracting Parties.

Each Contracting Party shall bear the expenses occasioned by the activity of its member of the tribunal, as well as the expenses of his representation in the arbitral proceedings; the expenses of the chairman and other expenses shall be borne equally by the two Contracting Parties. The arbitral tribunal may, however, adopt different rules of procedure as regards expenses. Otherwise, the arbitral tribunal shall determine its own procedure.

Article X. Subrogation

If a Contracting Party makes payments under a guarantee given in respect of an equity investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall acknowledge:

(a) The assignment of any right or claim accruing to this indemnified Party, to the first Contracting Party (or its designated agent), either by operation of law or by legal act.

b) That the first Contracting Party (or its designated agent) is entitled by virtue of subrogation to exercise the rights and assert the claims of the Indemnified Party.

The first Contracting Party (or its designated agent) shall therefore, if it so desires, be entitled to assert such right or claim to the same extent as its former holder whether before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances. If the first Contracting Party acquires sums in the lawful means of payment of the other Contracting Party or claims arising therefrom by assignment in accordance with the terms of a guarantee, the first Contracting Party shall be accorded, in respect thereof, treatment no less favorable than that accorded to funds of companies and nationals of the latter Contracting Party or of any third State arising from investment activities similar to those in which the indemnified Party was engaged. These amounts and credits shall be made freely available to the first Contracting Party for the purpose of defraying its expenses within the territory of the other Contracting Party.

Article XI. Territorial Extension

At the date of ratification of this Convention or at any subsequent date, the provisions of this Convention may be extended to the territories for whose international relations the Government of the United Kingdom is responsible by mutual agreement of the Parties, which may be concluded between the Contracting Parties by exchange of notes.

Article XII. Entry Into Force

This Convention shall be submitted for ratification and shall enter into force on the date of the exchange of the respective instruments of ratification.

Article XIII. Duration and Termination

1. This Convention shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of a period of twelve months from the date on which written notice of denunciation has been given by either Contracting Party to the other.

However, in respect of investments made while the Convention remains in force, its provisions shall continue to have effect in respect of such investments for a period of ten years from the date of termination of the Convention and without prejudice to the application thereafter of the rules of general international law.

2. This Convention may be amended at any time by mutual agreement of the Parties. The resulting modifications shall enter into force once the respective constitutional formalities have been complied with and the exchange of notes between the Contracting Parties has taken place.

San José, September 7, 1982.

Fernando Volio Jiménez,

Minister of Foreign Affairs and Worship.

Michael Brown,

Ambassador of the United Kingdom of Great Britain and Northern Ireland.

ADDENDUM

EXPLANATORY PARAGRAPH:

In reference between the Government of the Republic of Costa Rica and the Government of the United Kingdom of Great Britain and Northern Ireland on the protection and promotion of investments, signed today in San José, it is understood that in Article VI of the Agreement the phrase "free transfer" does not exempt investments and income from the payment of taxes in accordance with the laws and regulations in force.

San José, September 7, 1982.

Fernando Volio Jiménez

Michael Brown