

AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF JAMAICA ON PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Jamaica and the Government of the Italian Republic (hereinafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for closer economic cooperation between the two countries, and more specifically for investments by nationals of one Contracting Party in the territory of the other Contracting Party; and

Acknowledging that promotion and mutual protection under international agreements of such investments, will contribute towards stimulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" irrespective of the legal form adopted, shall be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or legal person being a national of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter. A change in the form in which assets are invested does not affect their character as investment and the term "investment" includes all investment whether made before or after the date of entry into force of this Agreement. Without limiting the generality of the foregoing, the term "investment" comprises:

a) Movable and immovable property and any other property rights including, in so far as they may be used for investment purposes, real guarantees on the property of others,

b) Equity holdings, debentures or shares and any other negotiable instrument or document of title, as well as Government and public securities in general;

c) Credits for sums of money or any right for pledges or services having an economic value connected with investments, as well as reinvested income;

d) Copyright and royalties, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any right of a financial nature accruing by law or by contract and any licence, concession or franchise issued in accordance with current administrative or other regulations governing the exercise of business activities, including prospecting for, cultivating, extracting and exploiting natural resources.

2. The term "investor" shall be construed to mean any natural or legal person being a national of a Contracting Party who has effected, or is effecting investments in the territory of the other Contracting Party.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person holding the nationality of that State.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity having an office in the territory of one of the Contracting Parties, and recognized by the latter Party in accordance with its national legislation as government-owned institution, joint-stock corporation or partnership, foundation, or association, regardless of whether its liability is limited. The capacity and any legal act of legal persons are regulated by laws or regulations of the Party in whose territory investments have been made.

5. The term "income" shall be construed to mean the money that has accrued or is still to accrue to an investment, including,

in particular, profits or portions of profits, interest income, income from capital investment, dividends, royalties, payment for assistance, technical services, reinvested capital, capital gains and any additional returns from an investment.

6. The term "territory" shall be construed to mean, in addition to the areas lying within the land boundaries, the marine and submarine zones over which the Contracting Parties have sovereignty, or exercise sovereign or jurisdictional rights, under international law.

Article 2. Promotion and Protection of Investment

1) Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory and shall, subject to their legislation authorize these investments.

2) Both Contracting Parties shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, enjoyment, transformation, cessation and liquidation of investments effected in their territory by investors of the other contracting Party, as well as the companies and firms in which these investments have been made, shall in no way be subject to unjustified or discriminatory measures.

Article 3. National Treatment and the Most Favoured Nation Clause

1) Both Contracting Parties, within their territory, shall accord to investments effected by investors of the other Contracting Party and to the income accruing to such investments no less favourable treatment than that accorded to their own nationals or investors of Third Countries.

2) The treatment accorded to the activities directly related to the investments of investors of either Contracting Party shall not be less favourable than that accorded to similar activities of their own nationals or by investors of any Third Country.

3) Both Contracting Parties shall regulate, according to their legislation and regulations, matters relating to entry, residence, work and travel within their respective territories encountered by nationals of the other Contracting Party and members of their families engaged in activities connected with investments in the spirit of this Agreement.

4) The provisions of paragraphs 1 and 2 of this Article do not apply to any advantages or privileges which one Contracting Party grants or may in the future grant to Third States by virtue of:

a) Its membership of Customs or Economic Unions, Common Market associations, Free Trade Areas, regional or subregional Agreement;

b) International multilateral economic Agreement, or;

(c) Agreements entered into in order to prevent double taxation or to facilitate cross-border trade.

Article 4. Compensation for Losses and Damage

1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses and damage, owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riots, or other similar events 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 nationals or companies or to nationals or companies of any Third State.

2) Without prejudice to paragraph 1 of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses and damage in the territory of the other Contracting Party resulting from: paragraph 1 of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses and damage in the territory of the other Contracting Party resulting from:

a) Requisitioning of their property by its forces or authorities; or

b) Destruction of their property by its forces or authorities which was not caused in combat — action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation.

3) Compensation payments shall be freely transferable without undue delay.

Article 5. Compulsory Acquisition

1. The investments to which this Agreement relates shall not be subjected to any measure which might limit rights of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless such measures are in accordance with the relevant laws and regulations.

2. Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects (herein after referred to as compulsory acquisition) in the territory of the other Contracting Party, except for public purposes or in the national interest, and against immediate, adequate and effective compensation; and on conditions that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The compensation shall be equivalent to the real market value, that is the value as determined by the market, of the investment, immediately prior to the time of the announcement by the public authorities of the compulsory acquisition. In determining the market value, due weight shall be given to any factors which might have affected the value before the measures were publicly announced by the authorities. The real market value shall be calculated according to internationally acknowledged accounting standards. Whenever there is no market as a basis for determining the value of the investment, compensation shall be calculated on the basis of a fair evaluation of the value of the investment, taking into account all relevant factors such as those elements which constitute distinctive features of the investment. Compensation shall include interest accruing on the date of payment, calculated on a six-month LIBOR basis from the date of compulsory acquisition.

In the event that the investor is aggrieved by a determination relating to compensation made by a Contracting Party under this Article the provisions of Article 9 will apply.

Once the compensation has been determined, it shall be promptly paid and authorisation for its repatriation issued.

Article 6. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that, after investors have complied with all their fiscal obligations, they may transfer the following abroad, without undue delay, in any convertible currency:

- a) The net capital used to initiate an investment and additional shares used to maintain and increase the investments.
- b) Net income, dividends, royalties, payments for assistance and technical services, interest and any other profits;
- c) The proceeds of the total or partial sale or liquidation by winding up or otherwise, of an investment; provided that, in cases where the proceeds constitute large sums and in periods of exceptional balance of payments difficulties, the transfer of a minimum of 33 1/3% per year is guaranteed over a period of three years at the relevant commercial rate of interest. This provision is without prejudice to any other agreement made between the investor and the Contracting Party concerned for the transfer of such proceeds;
- d) Funds to repay loans relating to an investment and interest due thereon; provided that the prior consent, if required, of the competent authorities has been obtained in respect of the repayment schedule;
- e) Remuneration and allowances paid to nationals of the other Contracting Party in respect of salaried work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national regulations.

2. Notwithstanding the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, no less favourable treatment than is accorded to investments effected by investors of Third States.

3. A Contracting Party shall be entitled to depart from the provisions of paragraphs 1 and 2 of this Article where the capital introduced into its territory has not been accorded, if required, approved status in accordance with the exchange control regulations in force in the territory of that Contracting Party at the time of introduction, except where such capital was introduced prior to the existence of any such regulations.

Article 7. Subrogation

In the event that one Contracting Party or any of its institutions have provided an insurance guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has made payments to said investor on the basis of that guarantee, the other Contracting Party shall recognize the assignment

of the rights of the insured investor to the Contracting Party guarantor, In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

Where, pursuant to articles 4, 5, 6 and 7, transfers are to be made, they shall be effected without undue delay and, at all events, within six months, provided that all fiscal obligations have been met. These transfers shall be made in a convertible currency at the prevailing exchange rate on the date of the transfer.

Article 9. Settlement of Disputes between Investors and the Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former shall if possible be settled amicably.

2. If such a dispute has not been settled amicably within a period of three months from the date on which either party to the dispute requested amicable settlement, either party may pursue local remedies for the settlement of that dispute.

3. If a dispute, relating to a legal question in terms of article 25 of the ICSID Convention, concerning the compulsory acquisition under article 5 of present Agreement has not been settled within a period of eighteen months from its submission to a competent body for the purpose of pursuing local remedies, then for the purpose of articles 28 and 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965 (the Convention) the Contracting Party hereby gives its consent for the submission of the disputes to conciliation or arbitration under those articles.

4. Nothing in this Article shall be construed as preventing the Contracting Party and the investor of the other Contracting Party, from agreeing to submit at any time by common consent the dispute referred in the aforementioned paragraphs to conciliation or arbitration under Articles 28 and 36 of the Convention, respectively.

5. If the dispute relates to a question other than one of compulsory acquisition under article 5, then the concerned contracting Party hereby consents to its immediate submission, if the investor so prefers, either to: article 5, then the concerned contracting Party hereby consents to its immediate submission, if the investor so prefers, either to:

a) Arbitration or conciliation under Articles 28 and 36 of the ICSID Convention; or

b) To an ad hoc arbitral tribunal in accordance with the procedures set out in the Uncitral Rules pursuant to the UNGA Resolution 31/98 of the 15 December 1986. Uncitral Rules pursuant to the UNGA Resolution 31/98 of the 15 December 1986.

There shall be three Arbitrators and, if they are not nationals of the Contracting Party, they shall be nationals of States which have diplomatic relations with both Contracting Parties; or

c) To conciliation in accordance with the procedures set out in the Uncitral Rules pursuant to the relevant UNGA Resolution.

6. In relation to arbitration, the Contracting Party which is a Party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor who is the other Party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

7. A legal person which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares is owned by nationals of the other Contracting Party shall in accordance with Article 25/(2b) of the Convention be treated for the purposes of the Convention as a national of the other Contracting Party. Article 25/(2b) of the Convention be treated for the purposes of the Convention as a national of the other Contracting Party.

8. 1 Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the International Centre for Investment Disputes (the Centre), unless;

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

(b) The other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

This does not preclude informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

8. 2 . Moreover, both Contracting Parties shall also refrain from negotiating through diplomatic channels any matter relating

to any conciliation or arbitration procedure established under UNCITRAL regulations until all these procedures have been concluded and the concerned Contracting Party has failed to comply with the ruling of the conciliation commission or of the arbitration tribunal.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.
2. In the event that the dispute cannot be settled within three months of the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.ad hoc Arbitration Tribunal as provided in this Article.
3. The Arbitration Tribunal shall be constituted in the following manner; within two months of the date on which the request for arbitration is received, each Contracting Party shall appoint a member of the Tribunal. These two members shall then choose a national of a Third State to act as Chairman. The Chairman shall be appointed within three months of the date on which the other two members are appointed.
4. If the two members have not been appointed within the time provided by paragraph 3. of this Article, either of the Contracting Parties may apply to the President of the International Court of Justice to make the appointments. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the appointment shall be made by the Vice President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties or he is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.
5. The arbitration Tribunal shall reach its decision by majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own costs at the hearings. The Chairman's costs and any other costs shall be divided equally between the Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

Article 11. Relations between Governments

The provisions of this Agreement shall apply irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 12. Application of other Provisions

1. Whenever any issue is governed both by this Agreement and by another international Agreement to which both the Contracting Parties are parties, or whenever it is governed otherwise by general international law, the most favourable provisions, case by case, shall be applied to the Contracting Parties and to their investors.
2. Whenever, as a result of laws, regulations, provisions or or specific contracts, one of the Contracting Parties has adopted a more advantageous treatment for the investors of the other Contracting Party than that provided in this Agreement, they shall be accorded that more favourable treatment.

Article 13. Entry Into Force

This Agreement shall become effective on the date on which both Contracting Parties have notified the other of the fulfilment of their respective constitutional requirements.

Article 14. Duration and Expiry Date

1. This Agreement shall remain effective for 10 years as from the date on which the notification procedures indicated in Article 13 have been effected, and it shall be tacitly renewed for further periods of 5 years, unless either Party terminates it by giving prior written notice thereof one year before any expiry date.
2. In the case of investments effected prior to the expiry dates of the present Agreement, as provided in paragraph 1 of this

Article, the provisions of Article 1 to 12 shall remain effective for a further five years after the aforementioned dates.

Done at Kingston on Sept 29th 1993 in two copies, one in Italian and one in English both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Ambassador Antonino Provenzano

FOR THE GOVERNMENT OF JAMAICA