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Treaty Series No. 8 (1992)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland and
the Government of the Republic of Ghana

for the Promotion and Protection of Investments

Accra, 22 March 1989

[Instruments of Ratification were exchanged on 25 September 1991
and the Agreement entered into force on 25 October 1991]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1992*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE REPUBLIC OF GHANA
FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and
the Government of the Republic of Ghana;

Desiring to create favourable conditions for greater investment by nationals and
companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international
agreement of such investments will be conducive to the stimulation of individual business
initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

a) "investment" means every kind of asset and in particular, though not exclusively,
includes:

- (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.

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) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

c) "nationals" means:

- (i) in respect of the Republic of Ghana: physical persons deriving their status as Ghanaian nationals from the law in force in the Republic of Ghana;
- (ii) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;

d) "companies" means:

- (i) in respect of the Republic of Ghana: any corporations, firms and associations incorporated or constituted under the law in force in the Republic of Ghana;
- (ii) in respect of the United Kingdom: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 12;

"territory" means:

- (i) 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 sea-bed and subsoil and the natural resources;

- (ii) in respect of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the seabed and subsoil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 12.

ARTICLE 2

Promotion of Investment

Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

ARTICLE 3

Protection of Investment

- (1) 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.
- (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 nationals or companies of the other Contracting Party.
- (3) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 4

National Treatment and Most-favoured-nation Provisions

- (1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
- (2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords its own nationals or companies or to nationals or companies of any third State.

ARTICLE 5

Compensation for Losses

Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or 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 nationals or companies or to nationals or companies of any third State. Resulting payments shall be freely transferable.

ARTICLE 6

Exceptions

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

- (a) any existing or future customs union 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 7

Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except where for a public purpose related to its internal needs, a Contracting Party expropriates the investments of nationals or companies of the other Contracting Party, the following conditions shall be complied with:

- (a) The measures shall be accompanied by provision for the payment of compensation amounting to the full and genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge whichever is the earlier.
- (b) The compensation shall be effectively realizable and freely transferable.
- (c) The compensation shall be paid without undue delay. If the compensation is not paid within six months, it shall after that date attract interest at the normal commercial rate until the date of payment.

(2) A national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, the provisions of paragraphs (1) and (2) of this Article shall apply.

ARTICLE 8

Repatriation of Investment and Returns

Each Contracting Party shall, in respect of investments, guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns. Transfers of currency shall be effected without undue delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

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 a national or company 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) 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 on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965¹ 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.

(3) 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 or application of this Agreement should, if possible, be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, 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 two 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 two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(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 any necessary appointments. If the President is a national of either Contracting Party or if he

¹ Treaty Series No. 25 (1967), Cmnd. 3255.

is otherwise prevented from discharging the said functions, 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 also 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 reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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. 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 tribunal shall determine its own procedure.

ARTICLE 12

Territorial Extension

At the time of ratification of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible, as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 13

Application of other Rules

If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 14

Entry into Force

This Agreement shall be ratified and shall enter into force thirty days after the date of exchange of Instruments of Ratification.¹

ARTICLE 15

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other: provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years from the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Accra this 22nd day of March, 1989.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

For the Government of the Republic of Ghana:

ARTHUR WYATT

O.Y. ASAMOAH

¹The Agreement entered into force on 25 October 1991.