

AGREEMENT

between

THE GOVERNMENT OF JAMAICA

and

THE GOVERNMENT OF THE SWISS CONFEDERATION

for

THE RECIPROCAL PROMOTION AND PROTECTION

OF INVESTMENTS

Preamble

The Government of Jamaica and the Swiss Federal Council,

Desiring to strengthen the economic cooperation between both States on the basis of the international law and mutual trust,

Intending to create and maintain favourable conditions for capital investments in both States,

Recognizing the need to promote and to protect foreign investments with the aim of fostering the economic prosperity of both States,

Have agreed as follows:

Text provided by the Embassy of Jamaica (Washington, DC).

Article 1

Definitions

For the purpose of this Agreement:

- (a) "Nationals" of a Contracting Party are physical persons who, according to the law of that State, are considered to be its citizens.
- (b) "Companies" are:
 - (i) with respect to the Swiss Confederation, juridical persons or business associations which are effectively controlled by Swiss nationals having a substantial part in the ownership;
 - (ii) with respect to Jamaica, corporations, firms or associations incorporated or constituted under the law in force in Jamaica.
- (c) The term "investments" shall include every kind of assets and particularly:
 - (i) movable and immovable property as well as any other rights in rem, such as charges on real estate, mortgages, liens, pledges;
 - (ii) shares, certificates or other kinds of participation in companies;
 - (iii) claims to money or to any performance under contract having a financial value;
 - (iv) copyrights, industrial property rights (such as patents for inventions, utility models, industrial designs or models, trade or service marks, trade names, indications of source or appellations of origin), know-how and goodwill;
 - (v) concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources as well as all other rights

given by law, by contract or by decision of the authority in accordance with the law.

- (d) 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.

Article 2

Promotion and Admission of Investments

- (1) Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its law and regulations.
- (2) When a Contracting Party shall have admitted an investment on its territory, it shall endeavour, consistent with its legislation, to 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.

Article 3

Treatment of Investments

Investments of nationals or companies of either 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 unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of investments in its territory of nationals or companies of the other Contracting Party.

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.

If a Contracting Party accords special advantages to nationals or companies of any third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals or companies of the other Contracting Party.

Special incentives granted by one Contracting Party only to its nationals and companies within the framework of its development policy in order to stimulate the creation of local industries, such as cottage industries, are considered compatible with this Article provided they do not significantly affect the investment or the activities of nationals and companies of the other Contracting Party in connection with an investment.

Article 4

Transfers

- (1) Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:
 - (i) returns on investments;
 - (ii) amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;
 - (iii) the proceeds, including possible capital appreciation, arising from the sale or the partial or total liquidation of the investment.

- (2) Notwithstanding the provisions of paragraph 1 of this Article the free transfer shall be subject to the following modalities:
 - (i) the free transfer of the items mentioned in sub-paragraphs, (i), (ii) and (iii) of that paragraph depends on the approval of the investments in

accordance with the law in force at the time the investment was made, if at that time such approval was required;

- (ii) in relation to sub-paragraph(ii) of that paragraph where the discharge of the loans or other contractual obligations is to be effected over a period of time, the prior consent of the competent authorities may be required;
- (iii) in relation to sub-paragraph(iii) of that paragraph in cases of exceptional balance of payments difficulties, and where large sums are involved, transfers may be limited to a minimum of 33 1/3 per cent per year.

Article 5

Compulsory Acquisition

- 1) Neither of the Contracting Parties shall compulsorily acquire, that is, shall take measures of expropriation or nationalization or any other measures having the same nature or the same effect against investment belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, under due process of law, and provided that provisions be made for adequate compensation. The amount of compensation which shall be effectively realisable, shall include interest, be paid without delay and be freely transferable.
- (2) Notwithstanding the provisions of paragraph (1) as regards the transferability of the compensation, in cases of exceptional balance of payments difficulties and where the compensation constitutes a large sum, a Contracting Party may limit the transfer to a minimum of 33 1/3 per cent a year.

Article 6

Compensation for losses

The nationals or companies of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place on the territory of the other Contracting Party shall benefit on the part of this latter from treatment in accordance with Article 3 of this Agreement as regards restitution, indemnification, compensation, or other valuable consideration.

Article 7

Pre-agreement investments

The present agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by nationals or companies of the other Contracting Party prior to the entry into force of this Agreement.

Article 8

Principle of subrogation

If a Contracting Party makes a payment to a national or company pursuant to a guarantee it has granted in respect to an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title.

Article 9

Disputes between a Contracting Party and an investor of the other Contracting Party

(1) For the purpose of settling disputes with respect to in-

vestments between a Contracting Party and a national or a company of the other Contracting Party and without prejudice to Article 10 of this Agreement (disputes between Contracting Parties), consultations will take place between the parties concerned.

- (2) If these consultations do not result in a solution within a period of twelve months from the date of the request to enter into consultations the Contracting Party and the national or company of the other Contracting Party shall by mutual consent determine whether to submit the dispute to conciliation or arbitration under Article 28 or 36 respectively of the Convention of Washington of March 18, 1965, on the settlement of investment disputes between States and nationals of other States (hereafter called the Convention),
- (3) If pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party agree to submit the dispute to conciliation under Article 28 of the Convention, the dispute shall be so submitted.
- (4) If pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party agree to submit the dispute to arbitration under Article 36 of the Convention, the Contracting Party may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration.
- 5) Where pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party fail to agree within a period of three months from the end of the period referred to in paragraph (2) on the submission of the dispute either to conciliation or arbitration under Article 28 or 36 respectively of the Convention, then for the purposes of Article 36 of the Convention, the Contracting Party hereby gives its consent to the national or company of the other Contracting Party submitting the dispute to arbitration under that Article provided local remedies have been exhausted in accordance with international law.
- (6) 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 national or company which 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 company which has been incorporated or constituted according to the law in force in the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in terms of Article 25 (2) (b) of the Convention, as a company of the latter.
- (8) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to the arbitration of the Centre, unless:
 - a) the Secretary-General of the Centre or a commission of conciliation or an arbitral tribunal decides that the dispute is beyond the jurisdiction of the latter, or
 - b) the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

Article 10

Disputes between Contracting Parties

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
- (3) If one of the Contracting Parties has not appointed its

arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

- (4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- (5) If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (7) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The costs 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.
- (8) The decisions of the tribunal, which shall be taken by a majority of votes, are final and binding for each Contracting Party.

Article 11

Other obligations

- (1) If the legislation of either Contracting Party entitles

investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that it is more favourable prevail over this Agreement.

- (2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by nationals or companies of the other Contracting Party.

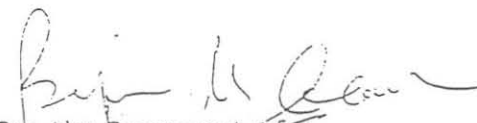
Article 12

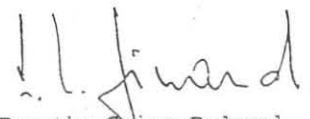
Entering into force, renewal, termination

- (1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of this Agreement, and shall remain binding 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.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Kinshasa, on 11th December, 1990...

in four originals, two in the French language and two in the English language, each text being equally authentic.


For the Government of
Jamaica


For the Swiss Federal
Council

December 11, 1990