

AGREEMENT
BETWEEN
THE GOVERNMENT OF JAMAICA
AND THE GOVERNMENT OF _____
CONCERNING
THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS*

The Government of Jamaica and the Government of _____,

(Hereinafter referred to as the "Contracting Parties").

Desiring to intensify economic co-operation between the two countries;

INTENDING to create favourable conditions for investments by investors of either country in the territory of the other.

RECOGNISING that the protection of such investments are conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

1. The term "investments" means every kind of asset established or acquired, including changes in the form of such investment invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively includes:

- a) movable and immovable property as well as any other property rights, such as mortgages, liens and pledges;
- b) shares in companies and other kinds of interests in companies;
- c) claims to money or to any performance under contract having an economic value;
- d) intellectual property rights, such as copyrights, patents, utility models, industrial designs, trade and business secrets, technical processes and goodwill;
- e) business concessions under public law, including rights to search for, cultivate, extract and exploit natural resources.

2. The term "returns" means the amounts yielded by an investment over any given period such as profit dividends, interest, royalties, fees and other current income.

3. The term "investors" means:

* Source: Government of Jamaica, Attorney General's Department.

- a) any natural person who is a national of a Contracting Party in accordance with its laws;
- b) any legal person constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party, whether or not for pecuniary profit.

4. The term "nationals" means:

in respect of Jamaica:

physical persons, who are citizens of Jamaica according to its laws.

in respect of the _____:

5. term "territory" means: the territory under sovereignty or jurisdiction of each Contracting Party and also includes their relevant maritime areas and airspace.

The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons, not having entered that territory as investors, have been residents in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

ARTICLE 2

Promotion of Investments

1. Each Contracting Party shall, within the framework of its national policies, encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory, and they shall consult with each other as to the most effective ways to achieve that purpose.
2. Each Contracting Party shall admit such investments subject to its laws and regulations.

ARTICLE 3

Protection of Investments

1. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof through unjustified or discriminatory measures.
2. Each Contracting Party, once it has admitted investments in its territory by investors of the other Contracting Party shall grant full legal protection to such investments and shall accord them treatment which is not less favourable than that accorded to investments by its own investors or by investors of third States.
3. Notwithstanding the provisions of Paragraph 2) of this Article, the treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or regional agreement.
4. The provisions of Paragraph 2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment,

preference or privilege resulting from an international agreement, relating wholly or mainly to taxation.

ARTICLE 4

Expropriation and Compensation

1. Neither of the Contracting Parties shall take any measure of nationalisation or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law. The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation was publicly announced, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realisable and freely transferable. In determining the compensation, due consideration shall be given to any factors which might have affected the value before the measures were publicly announced.

2. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State.

ARTICLE 5

Transfer of Funds

1. Each Contracting Party shall grant investors of the other Contracting Party the unrestricted right to transfer payments related to investment, in particular, though not exclusively of:

- a) the capital and additional sums necessary for the maintenance and development of the investments;
- b) the returns;
- c) the proceeds from a total or partial sale or liquidation of an investment, provided, however, that in periods of exceptional balance of payments difficulties, transfers may be phased over a three year period;
- d) the earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other;
- e) compensations provided for in Article 4.

2. Transfers shall be effected without delay, in freely convertible currency, at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which procedures shall not impair the substance of the rights set forth in this Article.

ARTICLE 6

Subrogation

1. If a Contracting Party or any agency designated by it makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognise the validity of the subrogation in favour of the former Contracting Party or its agency to any right or title held by the investor. The Contracting Party or any agency thereof shall, within the limits of subrogation be entitled to exercise the same rights which the investor would have been entitled to exercise.

2. In the case of subrogation as defined in Paragraph 1) above, the investor shall not pursue a claim unless authorised to do so by the Contracting Party or its agency.

3. As regards the transfer of payments, Article 4 and 5 shall, mutatis mutandis, apply to any such assigned right or claim.

ARTICLE 7

More Favourable Treatment

If the laws 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 is provided for by this Agreement, such provision shall, to the extent that it is more favourable prevail over this Agreement.

ARTICLE 8

Scope of Application

This Agreement shall apply to all investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party which have been or are made in accordance with the laws and regulations of the latter Contracting Party.

ARTICLE 9

Settlement of Disputes between the Contracting Parties

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

2. If a dispute cannot thus be settled within six months from the beginning of the negotiations it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has notified the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the periods specified in Paragraph 3) above either Contracting Party may, in the absence of any other arrangement, 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 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 Court 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 decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representatives in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different decision concerning costs. In all other respects, the tribunal shall determine its own procedure.

ARTICLE 10

Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between a Contracting Party and investors of the other Contracting Party concerning an investment of such in the territory of the former Contracting Party shall as far as possible be settled amicably between the parties concerned.

2. If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted to:

- a) the competent tribunal of the Contracting Party in whose territory the investment was made, or
- b) international arbitration according to the provisions of Paragraph 3.

3. The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

4. The award shall be binding on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention. The award shall be enforceable in accordance with the domestic law of the Contracting Party in which the investment in question is situated.

5. Neither Contracting Party shall pursue diplomatic channels in a dispute unless:

- (i) where the dispute was referred to the International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington D.C. on 18th March 1965, the Secretary General of the Centre, a Conciliation Commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or
- (ii) the other Contracting Party fails to comply with or abide by a final award, rendered by an arbitration tribunal.

ARTICLE 11

General Exceptions

1. Investments in cultural industries are exempt from the provisions of this Agreement. "Cultural Industries", means natural persons or enterprises engaged in any of the following activities:

- a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- b) the production, distribution, sale or exhibition of film or video recordings.
- c) the production, distribution, sale or exhibition of audio or video music recording;
- d) the publication, distribution, sale or exhibition of music in print or machine readable form, or
- e) radio communications in which the transmission are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all Satellite programming and broadcasting network services.

2. Notwithstanding any other provision of the Agreement, a contracting Party shall not be prevented from taking prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, or to ensure the integrity and stability of its financial system.

3. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Contracting Party's commitments or obligations under the Agreement.

ARTICLE 12

Entry into force, duration and termination

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of ten years from the date.

IN WITNESS THEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at _____ on thisday of, in duplicate in the English language.

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For the Government of Jamaica

For the Government of

