



Treaty Series No. 28 (1987)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Jamaica

for the Promotion and Protection of Investments

Kingston, 20 January 1987

[Instruments of ratification were exchanged on 14 May 1987 and the
Agreement entered into force on that date]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1987*

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

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

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, stock and debentures of companies or interests in the property of such companies;
 - (iii) claims to money or to any performance under contract having a financial value;
 - (iv) intellectual property rights and goodwill;
 - (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 or fees;
- (c) "nationals" means:
- (i) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;
 - (ii) in respect of Jamaica: physical persons deriving their status as Jamaican nationals from the laws of Jamaica;
- (d) "companies" means:
- (i) in respect of the United Kingdom: corporations, firms or 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;
 - (ii) in respect of Jamaica: corporations, firms or associations incorporated or constituted under the law in force in any part of Jamaica;
- (e) "territory" means:
- (i) in respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 12;
 - (ii) in respect of Jamaica: the territory which constitutes Jamaica.

ARTICLE 2

Promotion and Protection of Investment

- (1) 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.
- (2) 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 or disposal of investments in its territory of nationals or companies of the other Contracting Party.

ARTICLE 3

National Treatment and Most-Favoured-Nation Provisions

- (1) Neither Contracting Party shall in its territory subject investment 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, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.
- (3) Special incentives granted by one Contracting Party only to its nationals and companies in order to stimulate the creation of local industries are considered compatible with this Article provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party in connection with an investment.

ARTICLE 4

Compensation for losses

- (1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses 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 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 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. Resulting payments shall be freely transferable, subject to the right of each Contracting Party in exceptional balance of payments difficulties to exercise equitably and in good faith powers conferred by its laws to place limits on the amount transferred in cases where the compensation constitutes a large sum, provided however that the transfer of a minimum of 33 $\frac{1}{3}$ per cent a year is guaranteed. 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 control regulations in force.

ARTICLE 5

Exceptions

The provisions in 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 benefits 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 6

Compulsory Acquisition

(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 "compulsory acquisition") in the territory of the other Contracting Party except for a public purpose related to the needs of that Party and against adequate compensation. Adequate compensation shall amount to the market value of the investment compulsorily acquired immediately before the compulsory acquisition or impending compulsory acquisition was made known by the authorities, shall include interest at a normal commercial rate until the date of payment, shall be made without delay and be effectively realisable. In determining the market value, the Contracting Parties agree that due weight shall be given to any factors which might have affected the value before the compulsory acquisition was made known by the authorities. Such compensation shall also be freely transferable subject to the right of each Contracting Party in exceptional balance of payments difficulties to exercise equitably and in good faith powers conferred by its laws to place limits on the amount transferred in cases where the compensation constitutes a large sum, provided however that the transfer of a minimum of 33 $\frac{1}{3}$ per cent a year is guaranteed. 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 control regulations in force. The national or company affected shall have a right, under the law of the Contracting Party making the compulsory acquisition, to prompt review, by a judicial authority, or such other independent authority as may be established by the law of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) The provisions of paragraph (1) above shall also apply in the case where a Contracting Party compulsorily acquires 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 in respect of the investment of such nationals or companies.

ARTICLE 7

Repatriation of Investment and Returns

(1) 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, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws provided that:

- (a) such powers shall not be used to impede the transfer of profit, interest, dividends, royalties or fees;
- (b) as regards investments and any other form of return, transfer of a minimum of 20 per cent a year is guaranteed.

(2) Where, pursuant to paragraph (1) transfers of investments and returns are to be made, the transfer of the currency relating thereto shall be effected without 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.

(3) 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 control regulations in force.

(4) A Contracting Party shall be entitled to depart from the provisions of paragraphs (1) to (3) of this Article where the admission into its territory of the capital invested has not been accorded approved status in accordance with the exchange control regulations in force in the territory of that Contracting Party at the time of admission, except where such capital was admitted prior to the existence of any such regulations.

ARTICLE 8

Further Obligations

Each Contracting Party shall observe any obligations it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 9

Reference to International Centre for Settlement of Investment Disputes

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18th March 1965¹ any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former. A company 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 are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25 (2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party. If any such dispute should arise and agreement cannot be reached between the parties to the dispute through pursuit of local remedies in accordance with international law then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. 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.

(2) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to 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 should fail to abide by or comply with any award rendered by an arbitral tribunal.

ARTICLE 10

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.

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

(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 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 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 11

Subrogation

If either Contracting Party makes payment under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

(a) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from the party indemnified to the former Contracting Party (or its designated Agency);

and

(b) that the former Contracting Party (or its designated Agency) is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party.

The former Contracting Party (or its designated Agency) shall accordingly if it so desires be entitled to assert any such right or claim to the same extent as its predecessor in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of companies or nationals of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its expenditure in the territory of the other Contracting Party.

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

Entry into Force

This Agreement shall be ratified and shall enter into force on the exchange of Instruments of Ratification¹.

ARTICLE 14

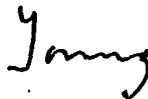
Duration and Termination

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 after 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 by their respective Governments, have signed this Agreement.

Done in duplicate at Kingston, Jamaica this twentieth day of January 1987.

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



[YOUNG]

For the Government of Jamaica:



[HUGH LAWSON SHEARER]

¹ The Agreement entered into force on 14 May 1987.