

# **Agreement between the Belgian-Luxembourg Economic Union and the Republic of Paraguay concerning reciprocal encouragement and protection of investments.**

The Government of the Kingdom of Belgium, acting in the name and on behalf of the Government of the Grand Duchy of Luxembourg, under existing agreements, and the Government of the Republic of Paraguay,

Desiring to intensify economic cooperation by creating favourable conditions for the achievement of investments by investors of either Contracting Party in the territory of the other Contracting Party,

Recognizing the positive impact that may exercise such an agreement to improve business contacts and build confidence in the domain of investments,

Have agreed as follows:

## **Article 1. Definitions**

1. The term investor means:

a) Any natural person who, according to the laws of Belgium or Luxembourg, Paraguay is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Paraguay respectively;

b) Any legal person constituted under the laws of Belgium or Luxembourg, Paraguay, and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Paraguay respectively.

2. The term "investments" means any kind of assets and any direct or indirect contributions in cash, or in-kind, or in services, invested or reinvested in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;

b) The actions, shares and any other forms of participation, even indirect minority, or to companies established in the territory of one of the Contracting Parties;

c) The obligations and rights, claims to any performance having an economic value;

d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names, know-how and goodwill;

e) The concessions under public law or under contract, including those relating to prospecting, culture, extract or exploit natural resources.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their classification as an investment within the meaning of this Agreement.

3. The term "returns" means the amounts yielded by an investment equal and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties or fees.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall encourage equal investments in its territory by investors of the other Contracting Party and

admits such investments according to its legislation.

2. In particular, each Contracting Party shall permit the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, provided that these activities have a bearing on the investments.

3. This Agreement shall apply to investments performed in the territory of either Contracting Party and admitted in accordance with its legislation by investors of the other Contracting Party, before or after the entry into force of the Agreement. However, it shall not apply to disputes or disputes arising before its entry into force.

### **Article 3. Investment Protection**

1. All existing and future investments made by investors of one of the Contracting Parties shall, in the territory of the other Contracting Party fair and equitable treatment.

2. Subject to the measures necessary for the maintenance of public order, these investments shall enjoy constant security and protection, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, management, maintenance, use, enjoyment or disposal.

3. The treatment and protection set out in paragraphs 1 and 2 shall be at least equal to those enjoyed by investors of a third country and shall in no case be less favourable than those accorded by international law.

4. However, this treatment and protection shall not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of:

- a) Its participation in or association of a free trade area, customs union, common market or any other form of international economic organizations;
- b) An agreement for the avoidance of double taxation or any other arrangement relating to taxation.

### **Article 4. Expropriation and Compensation**

Each Contracting Party undertakes not to take directly or indirectly any measure of expropriation or nationalization or any other measures having a similar effect against investments belonging within its territory to investors of the other Contracting Party.

2. If the requirements of public security or national interest justify derogation from paragraph 1, the following conditions shall be complied with:

- a) The measures shall be taken under due process;
- b) They are neither discriminatory nor contrary to a specific commitment;
- c) They are accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation will be equal to the real value of the investment immediately before  $\geq$  concerned or the measures taken or to be made public.

The allowances are specified in local currency and paid in the currency of the State to which the investor. It shall include interest at a normal commercial rate from the date of establishment until the date of payment, it shall be paid without undue delay and freely transferable, regardless of the place of residence or the headquarters of the claimant.

4. Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other contracting party benefit, on the part of this latter, from a treatment not less favourable than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

5. For the matters governed by this article, each Contracting Party shall accord to investors of the other party treatment no less than that which the reservation in its territory for investors of the most favoured nation. This treatment shall in no case be less favourable than that recognised by international law.

### **Article 5. Free Transfer**

1. Each Contracting Party in whose territory the investment equal have been made by investors of the other Contracting

Party shall grant those investors the free transfer of their liquid assets and in particular:

- a) The return of investments, including profits, interests, dividends, royalties, capital;
- b) The amounts required for the repayment of loans contracted regularly;
- c) Claims of the recovery of the proceeds of the total or partial liquidation of  $\leq \geq$  investments, including capital gains or increases in the capital invested;
- d) Compensation paid pursuant to Article 4;
- e) Royalties and other payments deriving from the licence fees and commercial or administrative assistance.

2. The nationals of either Contracting Party who are authorised to work under an investment agrees on the territory of the other Contracting Party, shall be free to transfer to their countries of origin an appropriate proportion of their remuneration.

3. Transfers shall be made freely and without any other charges than the usual taxes and fees. The guarantees provided for by this Article shall be at least equal to those accorded to investors in like circumstances of the most favoured nation.

## **Article 6. Exchange Rate**

1. The transfers referred to in articles 4 and 5 of this Agreement shall be made at the rate of exchange applicable on the date of the latter and in accordance with the foreign exchange regulations in force in the State in whose territory the investment has been made.

2. These rates shall in no case be less favourable than those accorded to investors of the most favoured nation, including by virtue of specific commitments, provided for in the agreements or arrangements concluded in protection of investments.

3. In all cases, the rates shall be fair and equitable.

## **Article 7. Subrogation**

1. If one of the contracting parties or a public agency thereof pays compensation to its own investors under a guarantee given in respect of an investment, the other Contracting Party acknowledges that the rights of the indemnified investors have been transferred to the Contracting Party or to the public body, as the insurer.

2. In the same way as investors, and within the limits of the rights so transferred, the insurer may, by virtue of subrogation to exercise the rights and assert the claims of investors and those relating thereto.

The rights of subrogation shall also apply to the transfer of rights and to arbitration referred to in Articles 5 and 11.

These rights may be exercised by the insurer within the limits the number of covered by the contract of guarantee, and by the investor to guarantee the recipient, within the limits of the risk that is not covered by the contract.

3. As far as the transferred rights, the other Contracting Party shall be entitled to plead against the insurer, subrogated into the rights of the investors indemnified the obligations under a legal or contractual relationship with them.

## **Article 8. Applicable Rules**

Where a matter relating to investments simultaneously is governed by this Agreement and by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other contracting party may avail itself of the provisions which are more favourable.

## **Article 9. Specific Agreements**

1. The investments which have been the subject of a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall at all times compliance with the commitments it has made to investors of the other contracting party.

## **Article 10. Disputes of Interpretation or Application of the Contracting Parties**

1. Any dispute concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. In the absence of rules through diplomatic channels, the dispute is submitted to a joint commission composed of representatives of both sides, which shall meet at the request of either party diligent and without undue delay.

3. If the Joint Commission cannot settle the dispute shall be submitted, at the request of either of the Contracting Parties, to arbitration proceedings implemented for each individual case in the following way:

Each Contracting Party shall appoint an arbitrator within a period of three months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to arbitration. Within two months after their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State who shall be Chairman of the Panel of Arbitrators.

If the time limits have not been made, either Contracting Party may invite the President of the International Court of Justice to make the appointment of the arbitrator or arbitrators not appointed.

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which either contracting party does not maintain diplomatic relations or if he is otherwise prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the appointment.

4. The Panel thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of the votes; they shall be final and binding on the contracting parties.

5. Each Contracting Party shall bear the costs of its appointed arbitrator. The costs resulting from the appointment of the third arbitrator and operating expenses of the panel shall be borne in equal parts by the contracting parties.

## **Article 11. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute concerning  $\leq$  investments  $\geq$  between an investor of one Contracting Party and the other Contracting Party, shall be the subject of a written notification, accompanied by an aide-memoire sufficiently detailed, by the most expeditious party.

To the extent possible, the dispute shall be settled amicably between the parties to the dispute and otherwise by conciliation between the Contracting Parties through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the date of notification, the investor may submit the dispute either to national jurisdiction of the Contracting Party in whose territory the  $\geq$  equal investment has been made or to international arbitration.

In the latter case, the dispute shall be submitted to one of the arbitral tribunals referred to below, at the choice of the investor:

a) The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States  $\leq$   $\geq$  and nationals of other States, opened for signature at Washington, on 18 March 1965;

b) An ad hoc tribunal which, unless the Parties decide otherwise, to the dispute will be constituted pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

To this end, each Contracting Party gives its anticipated and irrevocable consent and that any dispute to arbitration. This consent implies that they shall waive the requirement of exhaustion of administrative or judicial remedies.

3. In the event of recourse to national jurisdictions, the investor may submit the dispute to international arbitration set out in paragraph 2 of this Article only if the competent court has not acted definitively before the expiration of a period of 18 months.

4. Neither of the Contracting Party, Party to the dispute raise objection shall not, at any stage of the arbitration proceedings or enforcement of an arbitration award, on account of the fact that the investor, opposing party to the dispute, be collected compensation covering the whole or part of its losses by virtue of an insurance policy or to the guarantee provided for in Article 7 of this Agreement.

5. The arbitration panel shall decide on the basis of the national law of the Contracting Party Party to the dispute, including

the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment, as well as the Principles of International Law.

6. The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its legislation.

## **Article 12. Most Favoured Nation**

For all matters relating to the treatment of investments, investors of either Contracting Party shall enjoy, in the territory of the other party, the most-favoured-nation treatment.

## **Article 13. Entry Into Force and Duration**

1. This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their instruments of ratification. it shall remain in force for a period of ten years.

Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each contracting party reserving the right to terminate the agreement by a notification made at least six months before the date of expiry of the current period of validity.

2. The investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from that date.

Done at Brussels on 6 October 1992 in two originals each in Dutch, French and Spanish languages, all texts being equally authentic.

For the Belgo-Luxembourg Economic Union: W. Claes, Minister for Foreign Affairs

For the Government of the Republic of Paraguay: A. Cañete, Ambassador