

AGREEMENT BETWEEN THE BELGO-LUXEMBURG ECONOMIC UNION AND THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Belgium, acting in its own name and on behalf of the Government of the Grand-Duchy of Luxemburg, under the Convention establishing the Belgo-Luxemburg Economic Union, and

The Government of the People's Republic of Bangladesh,

Desiring to create favourable conditions for greater economic co-operation between them and in particular to encourage investments by nationals and companies of one State in the territory of the other State;

Recognising that reciprocal encouragement and protection under international agreements of such investments will be [conducive] to the stimulation of individual business initiative and is likely to promote investments for the mutual prosperity of the Contracting States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "nationals" means:

(a) In respect of the Belgo-Luxemburg Economic Union, any physical person who, according to the law of Belgium or Luxemburg, is a citizen of Belgium or Luxemburg;

(b) In respect of Bangladesh, physical persons deriving their status as Bangladeshi nationals from the law for the time being in force in Bangladesh.

(2) The term "companies" means:

(a) In respect of the Belgo-Luxemburg Economic Union, any juridical person lawfully constituted in accordance with the legislation of Belgium or Luxemburg and having its seat in the territory of Belgium or Luxemburg;

(b) In respect of Bangladesh, corporations, firms or associations incorporated or registered under the law for the time being in force in any part of Bangladesh.

(3) The term "investments" means every kind of assets and in particular, though not exclusively includes:

(a) Movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and stocks of companies;

(c) Title to money or to any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(4) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, shall include profits, interests, capital gains, dividends, royalties or fees.

(5) The term "territory" means:

(a) In respect of Belgium: The Kingdom of Belgium; when used in geographical sense, it means the national territory and any area beyond the territorial sea of Belgium, within which under Belgian law and in accordance with international law, Belgium exercises sovereign rights or its jurisdiction;

(b) In respect of Bangladesh, the territory in which the Constitution of the People's Republic of Bangladesh is in force, as well as any area of sea or seabed outside the territorial sea of Bangladesh in which Bangladesh has sovereign rights in accordance with international law and the laws of Bangladesh.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws, rules and regulations, shall admit such investments.

(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. Most-favoured-nation Provision

(1) Neither Contracting Party shall in its territory subject investments of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments of nationals or companies of any third State.

(2) Nevertheless, the treatment referred to in paragraph 1 shall not include privileges which may be extended by either Contracting Party by virtue of arrangements for taxes, customs, trade, tariff or monetary matters or any agreement designed to lead in future to such arrangements.

Article 4. 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 for a public purpose related to the internal needs of that party and against prompt, adequate and effective compensation. Such compensation shall be equivalent to the full value of the investments involved, on the date of expropriation, or on the date on which the expropriation became public knowledge; it shall be made without delay, be effectively realisable and be freely transferable.

(2) 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, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of these shares.

Article 5. Repatriation of Investments

(1) Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party free transfer of their capital and of their returns from it, subject to the observance of the usual formalities and also subject to the right of each Contracting Party in case of balances of payment difficulties to exercise equitably and in good faith powers conferred by its law.

(2) Each Contracting Party shall issue the authorizations required to ensure that the transfer can be effected without undue delay.

(3) The treatment, referred to in paragraphs (1) and (2) of this Article may not be less favourable than that accorded to nationals or companies of a third State who are in a similar situation.

Article 6. Reference to International Centre for Settlement of Investment Disputes

(1) Except matters relating to tax disputes, any investment dispute shall be notified by the investor of one Contracting Party,

to the other Contracting Party, by a written notification, accompanied by a sufficiently detailed claim.

Such dispute shall preferably be settled by amicable arrangement between the Parties to the dispute and failing such arrangement by conciliation between the Parties through the diplomatic channels.

(2) In the absence of an amicable arrangement, directly between the Parties or by conciliation through the diplomatic channels, within three months of the date of its notification, the dispute shall, upon the request of either of the parties concerned, be submitted to conciliation or arbitration of the International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965.

For this purpose, each Contracting Party hereby consents to submit any such dispute to the Centre.

This consent implies renunciation of the requirement that the internal administrative or judicial resorts should be exhausted.

(3) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise as an objection the fact that the national which is the other party to the dispute has received in pursuance of an insurance policy an indemnity in respect of some or all of its losses.

Article 7. 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 diplomatic channels.

(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 appointment. If the President is a national of either Contracting Party or 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 8. Subrogation

(1) If either Contracting Party (or its designated Agency), makes payment, to its own nationals or companies, under a guarantee it has given in respect of an investment or any part thereof in 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.

(2) Any such payment made by one Contracting Party, or any public institution of this Party, to its nationals in pursuance of this Agreement shall not affect the right of the Nationals to take proceedings to the International Centre for Settlement of Investment Disputes in accordance with Article 6 of this Agreement, nor shall it affect the right of the said national to carry on the proceedings until the dispute is settled.

Article 9. Entry Into Force

The Contracting Parties shall notify each other when any necessary internal procedures for approving this Agreement have been complied with.

This Agreement shall come into force on the date of the last notification.

Article 10. 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 ten 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 thereto by their respective Governments, have signed this Agreement.

DONE at Dacca in duplicate, in the English language, on the 22nd day of May 1981.

[Signed] For the Belgo-Luxembourg - Economic Union: CHARLES FERDINAND NOTHOMB Minister for Foreign Affairs

[Signed] For the People's Republic of Bangladesh: MUHAMMAD SHAMSUL HUQ Minister for Foreign Affairs