

# **AGREEMENT between the Belgian-Luxembourg Economic Union and the Government of the Republic of Côte d'Ivoire concerning the reciprocal promotion 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,

The Walloon Government,

The Flemish Government,

And the Government of the Brussels-Capital

On the one hand

And

The Government of the Republic of Côte d'Ivoire,

On the other hand,

(hereinafter referred to as the contracting parties)

Desiring to strengthen economic cooperation by creating favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "investor" means:

a) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Côte d'Ivoire is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Côte d'Ivoire respectively;

b) "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Côte d'Ivoire and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Côte d'Ivoire respectively.

2. The term "investment" means every asset any and all direct or indirect, in cash or in kind, invested or reinvested services 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, usufruct and similar rights;

- b) Shares, stocks 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, technical processes, trade names and goodwill;
- e) The concessions resulting from a unilateral act or bilateral, public or private, including those relating to prospecting or exploitation, extraction of natural resources.

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

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

4. The term "territory" means:

- a) As regards the Belgo-Luxembourg Economic Union, the territory of the Kingdom of Belgium and Luxembourg as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the State concerned and upon which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources;
- b) In respect of the Republic of Côte d'Ivoire, the territory of the Republic of Côte d'Ivoire, including the territorial sea, as well as the exclusive economic zone and over the continental shelf which Côte d'Ivoire exercises, in accordance with international law and its domestic legislation, sovereign rights for the purpose of exploration and exploitation of natural resources, biological and mineral located in the waters of the seas, the soil and subsoil thereof.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admits such investments in accordance with 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, in so far as these activities were related to investments.

## **Article 3. Protection of Investments**

1. All direct or indirect 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, shall enjoy such investments a constant protection and security, 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 referred to in paragraphs 1 and 2 of this article 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 such protection shall not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market, other forms of regional economic organizations.

## **Article 4. Deprivation or Restriction of Property**

1. Each Contracting Party undertakes not to take any measure of expropriation or nationalization or any other measure the purpose of which is to dispossess, directly or indirectly, an investor of the other contracting party of their investments in its territory.
2. If the requirements of public security or national interest justify derogation from paragraph 1 of this article, the following conditions shall be complied with:
  - a) The measures shall be taken in accordance with due process, and
  - b) The measures are not discriminatory; and

c) They are accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation will correspond to the real value of the affected investments immediately before the date on which the measures taken or to be made public.

The compensation shall be paid in the currency in which the investment has been made in convertible currency or any other agreed to by the investor and the Contracting Party.

They shall be made without delay and freely transferable. It shall include interest at a normal commercial rate from the date of establishment until the date of payment.

4. For the matters governed by this article, each Contracting Party shall accord to investors of the other party treatment at least equivalent to that provided 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. Losses Due to Exceptional Events**

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party, shall be accorded by the latter treatment not less than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

## **Article 6. Transfers**

1. Each Contracting Party shall, in accordance with its legislation in force at the date of transfer to investors of the other Contracting Party, the free transfer to or from its territory, all payments relating to an investment, and in particular:

- a) The amounts intended to establish and maintain or expand the investment;
- b) Amounts intended for the payment of contractual obligations, including the amounts required for the repayment of loans; royalties and other payments deriving from franchises, licences, concessions and other similar rights as well as salaries of expatriate personnel;
- c) Investment income;
- d) The proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;
- e) The compensation paid pursuant to article 4.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment in the territory of the other Contracting Party shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

3. Transfers shall be made freely during applicable on the date of the latter, to spot transactions in the currency used.

4. Each Contracting Party shall issue the required authorisations to ensure without delay the transfer without any other charges that the usual taxes and fees.

5. The guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation.

## **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 shall, subject to notification, recognize that the rights and claims of the investors shall be transferred to the contracting party or the public body.

2. 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 investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or, under existing international conventions or entered into by either of the Contracting Parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

## **Article 9. Specific Agreements**

1. Investments covered by a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and those of the specific agreement which may include, where appropriate, the economic and financial provisions derogating from 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. Settlement of Investment Disputes**

1. Any dispute relating to investment between an investor of one Contracting Party and the other Contracting Party shall be submitted to the competent court agreed between the parties to the dispute.

In the absence of an agreement conferring jurisdiction is made in accordance with paragraphs 2 to 7 of this article.

2. Any investment dispute 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 parties will endeavour to settle the dispute amicably by negotiation, which may have recourse to the expertise of a third party, or by conciliation between the Contracting Parties through diplomatic channels.

3. In the absence of amicable settlement by direct arrangement between the parties to the dispute by conciliation or through diplomatic channels within six months of its notification, the dispute shall be submitted at the choice of the investor, either to the competent court of the State in which the investment has been made or to international arbitration.

To this end, each Contracting Party consents advance irrevocable and that any dispute to arbitration. this consent implies that each contracting party waives require the exhaustion of local administrative or judicial remedies.

4. In the event of recourse to international arbitration, the dispute shall be submitted to an arbitral institutions described below, at the choice of the investor:

An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL),

The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965;

The Court of Arbitration of the International Chamber of Commerce in Paris;

The Arbitration Institute of the Stockholm Chamber of Commerce.

If the arbitration proceedings shall be submitted at the request of either Contracting Party, the request in writing of the investor concerned to express his choice in the arbitration body which shall be seized of the dispute.

5. 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 in the dispute has received an indemnity 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.

6. The arbitral tribunal shall decide on the basis of the domestic law of the Contracting Party involved in the dispute in whose territory the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which would be reached on investment, as well as the Principles of International Law

7. The arbitration 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 11. Most Favoured Nation**

For all matters relating to the treatment of investments of investors of either Contracting Party shall enjoy, in the territory of

the other party, the most-favoured-nation treatment.

## **Article 12. 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 shall be submitted to an ad hoc mixed commission composed of representatives of both sides, which shall meet at the request of either party.

3. If the joint committee referred to above 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 two 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.

If the Vice-President is also a national of either Contracting Party or of a State with which either Contracting Party does not maintain diplomatic relations, or is prevented, the member of the Court next in seniority who is not a national of either Contracting Party, 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 those related to the functioning of the panel shall be borne in equal parts by the contracting parties.

## **Article 13. Previous Investments**

This Agreement shall also apply to investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its legislation.

## **Article 14. Entry Into Force and Duration**

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

Unless one of the Contracting Parties denounces it at least twelve months prior to the expiry 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 twelve months before the date of expiry of the current period of validity.

2. 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 1 April 1999 in two originals, each in Dutch and French languages, all texts being equally authentic. The French text is authentic in case of divergence of interpretation.

For the Belgo-Luxembourg Economic Union:

For the Government of the Kingdom of Belgium in its own name and acting on behalf of the Government of the Grand Duchy of Luxembourg:

For the Walloon Government:

For the Flemish Government:

For the Government of the Brussels-Capital:

For the Government of the Republic of Côte d'Ivoire: