

AGREEMENT BETWEEN THE BELGO-LUXEMBURG ECONOMIC UNION AND THE GOVERNMENT OF THE REPUBLIC OF LIBERIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF BELGIUM, ACTING BOTH IN ITS OWN NAME AND IN THE NAME OF THE GRAND-DUCHY OF LUXEMBURG, BY VIRTUE OF EXISTING AGREEMENTS, and

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA, HEREINAFTER REFERRED TO AS THE CONTRACTING PARTIES DESIRING TO STRENGTHEN THE ECONOMIC COOPERATION BETWEEN THEM,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purpose of this agreement:

1. The term "investment" means every kind of goods, rights and interests of whatever nature in particular though not limited to the following:

- a) Movable and immovable property as well as any other rights in rent, such as mortgages, liens, usufruct, pledge and similar rights;
- b) Stock, shares and other kinds of interests including minority or indirect forms in companies constituted in the territory of one Party;
- c) Title to money or debentures or title to any legitimate 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, including those which are located in adjacent maritime areas over which the Contracting Parties exercise sovereign rights;

It being understood that those investments which have already been made or may be made subsequent to the entering into force of this Agreement, are in accordance with respective legislation of both Contracting Parties.

Any alteration of the form in which assets are invested shall not affect their qualification as investment provided that such alteration is not in conflict with the legislation of the State in the territory of which the investment is made and is consistent with the approval granted for the initial investment.

2. The term "nationals" means physical persons who, according to the law of each Contracting Party, are considered as citizens of that country.

3. The term "company" means any juridical person lawfully constituted in accordance with the legislation of either Contracting Party and having its seat in the territory of that Party.

Article 2.

1. Each Contracting Party shall encourage and create as far as possible favourable conditions for nationals and companies of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its legislation.

2. In particular, each Contracting Party shall facilitate the granting of the necessary permits in connection with such investments and with the carrying out of contracts of licence and technical assistance, both commercial and administrative.

Article 3.

1. Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of international law to investments made by nationals and companies of the other Contracting Party.
2. All investments shall enjoy continuous protection and security, excluding all unjustified or discriminatory measures which would either in law or in practice hinder their management, maintenance, utilisation, enjoyment or liquidation, except for measures required to maintain public order.
3. Treatment and protection referred to in paragraphs 1 and 2 shall be at least the same as those accorded by each Contracting Party to nationals and companies of the most favoured nation and shall in no case be less favourable than those recognized by international law.

Article 4.

Nationals or companies of either Contracting Party shall enjoy the benefits resulting from the exercise of their professional and economic activities which are related to the investments which they pursue on the territory of the other Contracting Party according to national treatment or treatment of the most favoured nation if this last one is more favourable.

Article 5.

1. Neither Contracting Party shall take any measure of expropriation, of nationalisation, or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments except in the public interest and provided that these measures are not discriminatory.
2. Any measure of dispossession which might be taken shall give rise to prompt, adequate and effective compensation in keeping with standard and accepted practice of international law.
3. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge.

The said compensation shall be paid without undue delay and shall include interest at all normal commercial rate until the date of payment, and such compensation shall be freely transferable.

4. Where a Contracting Party expropriates the assets of a company which is constituted under the law in force in its own territory, company in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1, 2 and 3 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation to the owners of these shares, in respect of their investment.
5. Where nationals or companies of one Contracting Party own shares in a foreign company, other than Belgian, Luxemburg or Liberian, which should be owner of shares in a company of the other Contracting Party and expropriated by this Party, this latter shall ensure that the provisions of paragraphs 1, 2 and 3 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to the aforementioned nationals or companies owners of shares in the foreign company concerned.

This provision shall only be applicable if the foreign company concerned or the State to which it belongs is not entitled to assert a right to indemnification or if that State should abstain from claiming the provided indemnification.

Article 6.

Each Contracting Party in the territory of which investments have been made by nationals and companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of:

- a) Returns from investments;
- b) Royalties deriving from incorporeal rights as defined in article 1.1 above;
- c) Repayment of loans which have been regularly contracted;
- d) The value of partial or total liquidation of the investment, including capital gains and increases in the capital investment;
- e) Compensation described in article 5 above.

The nationals of each Contracting Party who have been authorized to work as a result of an approved investment in the territory of the other Contracting Party shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in this article shall be promptly effected at the official exchange rate prevailing on the date of transfer.

Article 7.

1. If any Contracting Party (or any public institution of this Party) makes payments to its own nationals or companies as a result of a legal system of guarantee in respect of an investment within the framework of this Agreement, the other Contracting Party shall recognize the assignment of any right or claim from the nationals or companies indemnified to the former Contracting Party (or the public institution concerned).

2. The former Contracting Party (or the public institution concerned) shall be entitled by virtue of subrogation to exercise the rights and assert the claims of the said nationals or companies to the same extent.

3. The subrogation of rights shall also apply to the rights of transfer and arbitration referred to in articles 6 and 11 of this Agreement.

4. In case of insufficiency of payments referred to in paragraph 1 of this article, the nationals and companies concerned can take proceedings to the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), in accordance with article 11 of this Agreement or should the case arise, continue such proceedings which they should have instituted before the said payment until the full settlement of the dispute,

5. Neither Contracting Party which is a party to a dispute shall at any stage of conciliation or arbitration proceedings or enforcement of an award raise as an objection the fact that the national or company of the other Contracting Party which is the opposing party to the dispute, has received an indemnity covering all or some of his losses in pursuance of an insurance policy.

Article 8.

Investments having formed the subject of a special commitment of one Contracting Party with respect to the nationals or companies of the other Party, shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said commitment if the latter includes provisions more favourable than those of the present Agreement.

Article 9.

The most favoured nation treatment referred to in articles 1 and A of the present Agreement shall not be construed to extend to privileges that one Contracting Party accords to nationals or companies of a third State by virtue of its membership in or association with a custom union, a common market or a free trade area.

Article 10.

In the event of any matter being provided as well in this Agreement as in the national regulations of one Contracting Party, or where a Contracting Party has entered into a prior international agreement, or enters into a subsequent international agreement, whose terms in either case conflict with those of the present Agreement, no provision of this Agreement shall prevent nationals or companies of the other Contracting Party from availing themselves of the most favourable provisions.

Article 11.

1. Any dispute in respect of an investment, arising between a Contracting Party and a National or a company of the other Contracting Party (including cases in which one Contracting Party or a public institution of this Party is subrogated to the rights of its nationals or companies, according to provisions of article 7 of this Agreement), shall form the subject of a written notification with a sufficiently detailed memorandum, by the national or company concerned to the other Contracting Party.

Such dispute should, if possible, be settled either amicably by a direct agreement between the parties to the dispute or by conciliation between the Contracting Parties through diplomatic channels.

2. If the dispute cannot thus be settled within a period of six months of the receipt of the written notification, it shall upon

the request of the national or company concerned, be submitted to conciliation or arbitration to the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.),

For this purpose, each Contracting Party hereby gives its advanced and irrevocable consent to submit any such dispute to this Centre.

Article 12.

Any disagreement relating to the interpretation or application of this Agreement which has not been settled by diplomatic channels within a period of six months, may be submitted at the request of either Contracting Party, to an Arbitral Tribunal to be created as follows:

Each Contracting Party shall appoint one arbitrator within one month of the receipt of the request for arbitration. The two arbitrators thus appointed shall appoint a third arbitrator, who must be a national of a third country, within two months from the date of notification by the last of the two Parties to appoint its arbitrator.

If the periods specified in the paragraph above have not been met, either Contracting Party in the absence of any other Agreement shall invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Under Secretary next in Seniority to the Secretary-General, who is not a national of either Contracting Party, shall make the necessary appointments.

The Contracting Parties may agree in advance to appoint for a period of five years which shall be renewable, the person to serve in the capacity of third arbitrator in case of disagreement.

The Tribunal shall reach its decision by a majority of votes and the decision of the Arbitral Tribunal shall be final and legally binding upon the Contracting Parties. The Tribunal shall establish its own rules of procedure.

Each Contracting Party shall bear the cost of its own member and of its counsel during the arbitral period. The cost of the chairman and the remaining cost of the arbitration proceedings shall be shared equally between the Contracting Parties.

Article 13.

The present Agreement shall be approved in accordance with the constitutional procedure in force in each Contracting State; the exchange of instruments of ratification (or approbation) shall take place as soon as possible.

The Agreement shall enter into force on the date of the exchange of instruments of ratification (or approbation).

The present Agreement shall be in force for an initial period of ten years. It shall remain in force thereafter unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

In case of termination, this Agreement shall continue to be effective for investments made before the termination for a period of fifteen years.

In witness whereof the undersigned representatives duly authorized thereto by their respective Governments have signed the present Agreement.

Done at Monrovia, on the 5th day of June, 1985, in duplicate, in the English language, both texts being equally authentic.

For the Belgo-Luxembourg Economic Union,

A. KEMPINAIRE.

For the Government of the Republic of Liberia, McLEOD E.T. DARPOH.