Agreement between the Belgo-Luxembourg Economic Union and Gabon on the 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,

The Flemish Government,

The Walloon Government,

The Government of the Brussels-Capital Region,

And

The Government of the Gabonese Republic

Hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation between the two Contracting Parties,

In order to create favourable conditions for investment by investors of one party in the territory of the other party,

Recognising that an agreement on the reciprocal promotion and protection of investments is likely to stimulate entrepreneurship and will contribute to the prosperity of both parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any property, direct or indirect participation or contribution or any kind to an undertaking or economic activity, including all assets, liabilities, financial resources, as well as the share capital or any part of the assets invested or reinvested in economic activity, by a natural or legal person of one Contracting Party in the territory of the other party.

The following shall be considered in particular, though not exclusively, as investments:

a) The actions, shares or any other forms of participation in companies formed in the territory of a Contracting Party;

b) The goods reinvested, claims and rights to any performance having an economic and financial value;

c) Movable and immovable property, goodwill, as well as any other rights in rem, such as mortgages, liens, pledges, security interests, usufruits and any other similar rights;

d) Intellectual property rights, technical and industrial processes, trade marks and any other similar intangible rights;

e) Contractual or concessions under public law including those relating to the exploration and exploitation of natural resources.

Any alteration of the form in which assets and capital invested or reinvested does not affect their character as investments within the meaning of this Agreement. The content and scope of the corresponding rights in the various categories of assets shall be determined by the laws and regulations of the Contracting Party in whose territory the investment is situated.

2. The term "investor" means in respect of either Contracting Party:

a) Any natural person who is a national of one of the Contracting States under its laws relating to nationality; and

b) Any legal person constituted in accordance with the legislation of one of the contracting States and having its registered office in the territory of that State,

Making investments in the territory of the other contracting party.

3. The term "income" means any revenue reported by an investment and in particular, though not exclusively, any profits, interests, capital gains, dividends, royalties on intellectual property rights; the remuneration for the provision of services in the areas of management or technical assistance as well as the recommendations.

4. The term "territory" means the territory and the air and maritime areas over which a Contracting State shall, in accordance with its laws and international law, sovereign, sovereign rights or jurisdiction.

Article 2. Treatment of Investments

1. Each Contracting Party shall promote investments of investors in its territory of the other Contracting Party.

In particular, each Contracting Party shall facilitate 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.

2. Each Contracting Party shall admit in its territory investments of investors of the other Contracting Party in accordance with its national law and applicable international practice. In this connection, these investments are fair and equitable treatment and shall enjoy constant protection and security in the territory of one or both of the Contracting Parties.

3. Neither Contracting Party shall interfere with the management, operation, maintenance, use, enjoyment, acquisition, expansion, disposal or liquidation of an investment made by investors of the other Contracting Party through discriminatory and arbitrary measures.

4. Each Contracting Party shall carry out any commitment in relation to an investment made by investors of the other Contracting Party.

5. It shall not subject existing or new investments and related activities undertaken in its territory by investors of the other Party to treatment less favourable than that which it accords, in like circumstances, to investors of any third country.

6. The provisions concerning the most-favoured-nation clause does not oblige one contracting party to extend to investments of the other party the benefit of any treatment, preference or privilege which it accords in accordance with the commitments undertaken in the framework of:

a) Its participation in or association of a free trade area, customs union, common market or any other form of international economic organization,

b) An agreement for the avoidance of double taxation or other tax convention.

Article 3. Compensation for Expropriation or Nationalization

1. Investments of investors of either Contracting Party shall not be nationalized or subject to measures having an effect equivalent to nationalization or expropriation in the territory of the other Contracting Party.

2. If public interest considerations justify a derogation from paragraph 1, the following conditions shall be met:

a) The measures shall be taken under due process; they are neither discriminatory nor contrary to a specific agreement as provided for in Article 8;

b) They are accompanied by provisions for the payment of adequate and effective compensation in accordance with the Principles of International Law

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 a freely convertible currency. 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. In accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and the investor concerned has the right to have the legality of the expropriation and the valuation of its investment and the

amount of compensation to prompt review by a competent judicial or administrative authority of that Party, in accordance with the principles set out in this article.

5. If a Contracting Party expropriating the assets of a company incorporated into its territory in accordance with its laws and regulations and whose shares are owned by investors of the other contracting party, the party expropriatrice act in accordance with the provisions of this article to ensure adequate and effective compensation of investors of the other party, in proportion to their investments.

6. If investors of any Contracting Party who are owners of shares of a company of a third State who would itself shareholder of a company of a party, the latter expropriatrice party shall apply the provisions of this article, investors in proportion to their investments.

This provision shall apply only if the company of the third State, or the State to which it belongs, is not entitled to assert a right to compensation or if that company, or that State, refrains from claiming the compensation provided for.

Article 4. Compensation for Damages Resulting from Acts of War or Similar Events

1. Investors of either Contracting Party whose investments suffer, in the territory of the other Contracting Party, losses owing to war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or insurrection in the territory of that Contracting Party shall enjoy, with respect to restitution, compensation, compensation or other treatment a settlement, which is no less favourable than that accorded by that contracting party to its own investors and not less favourable than that accorded by investors of that Contracting Party to any third State.

2. Any compensation, compensation or other settlement made pursuant to this article shall be freely transferable.

Article 5. Transfers

1. In respect of investments made in its territory by investors of one Contracting Party and the other Contracting Party shall grant those investors the free transfer of:

a) Income from such investments;

b) Royalties and other payments resulting from the rental patent and trademark factories or concessions and other similar rights;

c) Payments relating to the repayment of loans;

d) The amounts spent for the management of the investment in the territory of the other party;

e) Compensation payments made under articles 3 and 4;

f) The proceeds of the total or partial sale or liquidation of the investment, including capital gains or increases in the capital invested and the liquidation carried out by virtue of a circumstance set out in article 4.

2. Where an investor of one of the Contracting Parties has not entered into other arrangements with the competent authorities of the other Contracting Party in whose territory the investment is located; transfers under paragraph 1. of this article will be made in any freely convertible currency.

3. The transfers referred to in this article 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.

4. Without prejudice to the provisions of article 3, in the event of exceptional balance-of-payments difficulties and where the amount of compensation owed pursuant to article 3 does not exceed the normal capacity for repayment of the State, the latter expropriateur reserves the right to authorize the transfer of such payment by instalments.

Article 6. 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 the investors, and within the limits of the rights thus transferred, the insurer may, by way of subrogation, exercise and enforce the rights of the said investors and the claims relating thereto.

The rights of subrogation shall also apply to the transfer of rights and to arbitration referred to in articles 5 and 10.

Those rights may be exercised and actions 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. In respect of the rights transferred, the other Contracting Party may assert against the insurer, subrogated in the rights of the indemnified investors, the obligations incumbent on the latter legally or contractually.

Article 7. Entry, Residence and Employment

Each Contracting Party shall, within the framework of its laws and regulations, deal with matters relating to the entry into, stay, work and movement in its territory of investors of the other Contracting Party engaged in activities related to investments covered by this Agreement.

Article 8. Special Agreements

Investors of one Contracting Party may conclude with the other Contracting Party special conventions whose provisions may not be contrary to this Agreement.

These investments under special agreements shall be governed by the provisions of the latter and in the alternative, by those of this Agreement.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation and application of this agreement should, as far as possible, be settled amicably through diplomatic channels.

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

3. If the Committee of Experts is unable to settle the dispute, it shall be submitted, at the request of either Contracting Party, to an arbitration procedure implemented, for each particular case, as follows:

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 three months of the appointment of 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 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 a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior member of the Court 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 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. 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 dispute shall be settled amicably between the parties to the dispute and otherwise by conciliation through diplomatic channels.

2. If the dispute cannot thus be settled within 12 months of its notification, the investor may submit the dispute either to national jurisdiction of the Contracting Party in whose territory the investment has been made or to international arbitration.

In the latter case, the dispute shall be submitted to 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.

To this end, each Contracting Party consents that any dispute to the Centre. This consent implies that they shall waive the requirement of exhaustion of administrative or judicial remedies.

3. Neither of the Contracting Party, Party to the dispute raise objection shall not, at any stage of proceedings or enforcement of an 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 6 of this Agreement.

4. The ICSID tribunal shall decide on the basis of the national 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

5. The ICSID awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 11. Most-favoured Nation Treatment

In respect of all matters covered by this Agreement, investors of either Contracting Party shall enjoy, in the territory of the other party, the most-favoured-nation treatment.

Article 12. Final Provisions

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 from that date.

2. It shall be automatically renewed for a further period of ten years unless one of the Contracting Parties denounces it through diplomatic channels, at least twelve months before the date of expiry of the current period of validity.

3. In the event of termination, investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized by their respective Governments, have signed this Agreement.

DONE at Brussels, this 27th day of May 1998, in two originals in the French and Dutch languages, each text is equally authentic.

For the Belgian-Luxembourg Economic Union,

(Signature)

For the Government of the Gabonese Republic,

(Signature)

For the Government of the Kingdom of Belgium, acting both on its own behalf and on behalf of the Government of the Grand Duchy of Luxembourg,

(Signature)

For the Walloon Government,

(Signature)

For the Flemish Government,

(Signature)

For the Government of the Brussels-Capital Region,

(Signature)