

# **AGREEMENT BETWEEN THE REPUBLIC OF COSTA RICA, on the one hand, AND THE BELGIUM-LUXEMBOURG ECONOMIC UNION, on the other hand, FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Republic of Costa Rica,

And

The Government of the Kingdom of Belgium, acting on its behalf and on behalf of the Government of the Grand Duchy of Luxembourg, under existing agreements, the Government of the Walloon Region, the Government of the region of Flanders, and the Government of the Brussels-Capital Region, on the other hand (hereinafter referred to as the "Contracting Parties"),

Desiring to strengthen their economic cooperation through the creation of 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 for each Contracting Party, the following subjects who has made investments in the territory of the other Contracting Party in accordance with the legislation of the latter and the provisions of this Agreement:

a) Any natural person who, in accordance with the laws of the Republic of Costa Rica, the Kingdom of Belgium or of the Grand-Duchy of Luxembourg, is considered as a citizen of the Republic of Costa Rica, the Kingdom of Belgium or of the Grand-Duchy of Luxembourg respectively;

b) Any legal person or any other organization duly incorporated or constituted in accordance with the laws of the Republic of Costa Rica, the Kingdom of Belgium or of the Grand-Duchy of Luxembourg, whether or not for profit and having its registered office in the Republic of Costa Rica, the Kingdom of Belgium or the Grand Duchy of Luxembourg respectively.

2. The term "investments" means every kind of asset and any contribution invested or reinvested directly or indirectly by an investor of a Contracting Party in any sector of economic activity in the territory of the other contracting party.

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

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

b) Shares, securities, bonds, corporate rights and any other kind of equity, including those minority or indirect, in companies formed in the territory of a Contracting Party;

c) Rights and obligations, any other performance having an economic value directly related to the investment;

d) Intellectual Property Rights including copyrights and related rights, trademarks, geographical indications, industrial designs, patents and industrial designs;

e) Concessions granted under public law or under contract, including concessions to the exploration, development, cultivation, extract or exploit natural resources.

Any change in the form in which assets have been invested capital and reinvested or shall not affect their appointment as "investment" for the purpose of this Agreement.

3. The term "income" means the profits of an investment and shall include in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and other capital gains.

4. The term "territory" applies to the territory of the Republic of Costa Rica, the territory of the Kingdom of Belgium and the territory of the Grand Duchy of Luxembourg, as well as the maritime areas including the marine and underwater areas which extend beyond the territorial waters of the States concerned and over which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its legislation.

2. In particular, each Contracting Party shall permit the conclusion and implementation of licensing agreements and agreements, commercial or administrative assistance in accordance with its laws, provided that such activities associated with such investments.

3. For the purpose of promoting investment flows, at the request of the other Contracting Party each Contracting Party shall make an effort to notify the other Contracting Party on any chance of investment in its territory.

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

1. All investments, direct or indirect, made by investors of one Contracting Party shall enjoy fair and equitable treatment in the territory of the other contracting party.

2. Except for measures required to maintain public order, shall enjoy such investments continuous protection and security, excluding any unjustified or discriminatory measure that might hinder, either in law or in fact, management, maintenance, use, possession or liquidation.

## **Article 4. National Treatment and Most Favoured Nation**

1. In accordance with its laws and regulations, each Contracting Party shall accord to investments made by investors of the other Contracting Party in the territory of the latter, treatment no less favourable than that accorded to its own investments of investors.

2. Each Contracting Party shall accord to investments made by investors of the other Contracting Party in the territory of the latter, treatment no less favourable than that accorded to investments of investors of any third State.

3. Each Contracting Party shall accord more favourable treatment to investments of investors of the other Contracting Party, or whether national treatment most favoured nation treatment.

4. However, nothing in this article shall cover the privileges granted by either Contracting Party to investors of a third State in accordance with its present or future participation or association with a free trade area, customs union, common market, economic and monetary union or other similar regional economic integration organization.

5. Nothing in this article shall be construed as to oblige one contracting party to extend to investments of investors of the other Contracting Party deductions and tax exemptions or any other similar advantages resulting from an agreement on the avoidance of double taxation or any other arrangement relating to taxation, concluded between a Contracting Party and any third State.

## **Article 5. Expropriation and Compensation**

1. Each Contracting Party undertakes not to take any measure of expropriation or nationalization or any other measures having a direct or indirect impact of dispossession (hereinafter referred to as "expropriation") to investors of the other Contracting Party of their investments in its territory.

2. If for reasons of public interest require a derogation from the provisions of paragraph 1, the following conditions shall be complied with:

a) The measures shall be taken under due process;

b) The measure shall not be discriminatory;

c) The measures shall be accompanied by provisions for the payment of adequate and effective compensation.

3. Such compensation shall be equivalent to the market value of the investments the previous day on which the measure was taken or outside public knowledge, which was first.

In determining the market value shall apply the following rules:

a) The views of experts shall contain all information necessary to identify the assets valued;

b) In cases of immovable property, the decision shall include an independent assessment of the ground plantations, construction, leases, trade rights, rights to exploit mineral deposits and any other asset or right having an economic value;

c) In the case of movable property, each property must be valued individually and all the characteristics that influenced the valuation must be indicated;

d) The valuation shall take into account only the actual damages. notwithstanding subparagraph (b) above, including future events or expectations or right shall not be taken into account. the value added resulting from the draft arising from the expropriation shall not be recognized;

e) All opinions of experts shall specify elements considered in detail to allocate the value of the assets expropriated marking and the methodology used.

4. Such compensation shall be paid in any convertible currency. it shall be paid without delay and shall be freely transferable. It shall include interest at a normal commercial rate based on the average deposit rate prevailing in the national banking system of the Party where the expropriation was made in accordance with the law of that Contracting Party.

5. The Investor affected shall have a right under the law of the contracting party making the expropriation, to prompt review by a judicial or other independent authority of that party of its case and of the valuation of its investment in accordance with the principles set out in this article.

## **Article 6. Compensation for Losses**

Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party as regards treatment, restitution, indemnification, compensation or other treatment a settlement, at least equal to that Contracting Party of its own accord to investments or investors to investments of investors of any third State, whichever is more favourable to the investor concerned.

## **Article 7. Transfers**

1. Each Contracting Party shall accord to investors of the other contracting party or the free transfer into its territory of all payments relating to an investment, in accordance with its laws and, in particular, though not exclusively, the following:

a) Amounts necessary to establish, maintain or expand the investment;

b) Amounts necessary for payments under a contract, 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 staff;

c) Revenue from investments;

d) Proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;

e) The compensation pursuant to Articles 5 and 6;

f) Payments arising from the settlement of disputes.

2. The nationals of either Contracting Party who have been authorised to work in the territory of the other contracting party in connection with an investment, they shall also be allowed to transfer an appropriate portion of their earnings to their country of origin, in accordance with the law of that Contracting Party.

3. Transfers shall be made in freely convertible currency at the rate applicable to "spot" transactions in the currency used on

the day the transfer is made.

4. Without prejudice to the provisions of paragraph 1 of this article, each Contracting Party shall be permitted in exceptional circumstances or serious balance of payments difficulties, to temporarily restrict transfers, on a fair and non-discriminatory basis in accordance with internationally accepted standards. Limitations on transfers adopted or maintained by a Party in accordance with this paragraph shall be notified promptly to the other party.

## **Article 8. Subrogation**

1. If a Contracting Party or any public institution of that Party pays compensation to its own investors pursuant to a guarantee against non-commercial risks providing coverage to an investment, the other Contracting Party shall recognize to the first Contracting Party or public institution concerned that it has replaced the rights of the investor.

2. As far as the subrogated rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated to the rights of the indemnified investors the latter's obligations under the law or contract.

## **Article 9. Most Favourable Conditions**

If a matter concerning investment is governed by this Agreement and by the national legislation of a Contracting Party or in existing international conventions, or accede to the parties in the future, investors of the other Contracting Party shall be entitled to benefit from the provisions which are more favourable to their investments.

## **Article 10. Specific Agreements**

1. The investments made in accordance with a specific agreement concluded between a Contracting Party and investors of the other party shall be covered by the provisions of this Agreement and those of the specific agreement.

2. Each Contracting Party undertakes to ensure at any time to the commitments made vis-à-vis with investors of the other Contracting Party shall be observed.

## **Article 11. Settlement of Disputes between Investors and a Contracting Party of the other Contracting Party**

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party with respect to matters covered by this Agreement, shall be notified in writing by the first party to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

To the extent possible, the Parties shall endeavour to remedy the dispute through negotiations, if necessary for the Council of a third party, or by conciliation between the Contracting Parties through diplomatic channels.

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

To this end, each Contracting Party agrees to prior and irrevocably to settle any dispute to such arbitration. This consent implies that both parties shall waive the right to request that the domestic administrative or judicial remedies should be exhausted.

3. In case of international arbitration, the dispute shall be submitted for settlement by arbitration to one of the following:

- The International Centre for the 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, when each State Party to this Agreement may be a party to this Convention;
- the ICSID Additional Facility, provided that one of the contracting parties is a party to the ICSID; or
- an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), where one of the Parties is a member of the ICSID.

4. At any stage of the arbitration proceedings or the enforcement of the arbitral award, neither of the contracting parties involved in a dispute shall be entitled to object to the fact that the investor who is the opposing party in the dispute has received an indemnity covering wholly or partially his losses pursuant to an insurance policy or to the guarantee provided

for in article 8 of this Agreement.

5. Once the investor has submitted the dispute to either a competent national court of the Contracting Party in dispute or to an arbitral procedure, the selection of one or another shall be final.

6. The arbitral tribunal shall decide on the basis of national legislation, including the rules relating to conflicts of law, of the Contracting Party to the Party in whose territory the investment dispute has been made, as well as on the basis of the provisions of this Agreement, the terms of the specific agreement which may have been made on investment and the principles of international law.

7. The arbitral awards shall be final and binding on the parties to the dispute. each contracting party commits itself to execute the award according to its national law.

8. A Contracting Party shall not treat through diplomatic channels any matter referred to either national courts or tribunals in accordance with the terms of this article, except in the event that a disputing party has not complied with the judicial or arbitral decision.

## **Article 12. Settlement of Disputes between the Contracting Parties Concerning the Interpretation or Application of this Agreement**

1. Any dispute concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. In the absence of a solution through diplomatic channels, the dispute shall be submitted to a joint commission composed of representatives of both parties; this committee shall meet without undue delay at the request of the first party to take action.

3. If the Joint Commission cannot settle the dispute shall be submitted, at the request of either of the contracting parties to a court of arbitration as follows for each individual case:

Each Contracting Party shall appoint one arbitrator within a period of three months from the date on which either Contracting Party has informed the other party of its intention to submit the dispute to arbitration. Within two months after their appointment, these two arbitrators shall be appointed by mutual consent to a national of a third State as Chairman of the Court of Arbitration.

If these time limits are not met, either of the Contracting Parties shall request the President of the International Court of Justice to make the necessary appointments.

If the President of the International Court of Justice is a national of one of the contracting States or of a State with which one of the Contracting States had no diplomatic relations or for any other reason unable to perform this function, it shall request the Vice-President of the International Court of Justice to make the appointments.

If the Vice-President is a citizen of either contracting State or if it can comply with this function, the member of the International Court of Justice with more seniority who is not a citizen of either Contracting State shall be invited to make the necessary appointments.

4. The Court thus constituted shall determine its own rules of procedure, unless otherwise agreed upon by the contracting parties. such decisions shall be taken by a majority of votes; and shall be final and binding on the contracting parties.

5. The arbitral tribunal shall make its award based on the provisions of this Agreement and other relevant agreements between the Contracting Parties and based on universally accepted principles of International Law.

6. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. the costs related to the appointment of the third arbitrator and the administrative expenses of the Court shall be borne in equal parts by both contracting parties.

## **Article 13. Prior Investment**

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter. For greater certainty, this Agreement does not apply to disputes arising or legal actions undertaken or completed prior to its entry into force.

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

1. This Agreement shall enter into force one month after the day of the exchange of instruments of ratification by the Contracting Parties. this Agreement shall remain in force for an initial period of ten years.

Unless either Contracting Party notifies the termination of this Agreement at least twelve months prior to the expiry of the period of validity, this Agreement shall be tacitly extended each time for a period of ten years, provided that each Contracting Party reserving the right to terminate the agreement by means of a written notification given 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 will be covered by this agreement for a further period of ten years from the date of termination.

Done at Brussels on 26 April 2002 in two originals in the English, French, Dutch and English, all being equally authentic. The English language text shall prevail in case of difference of interpretation.

For the Republic of Costa Rica

For the Economic Union of Belgium-Luxembourg

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

For the Government of the Walloon Region

For the Government of the Flemish Region

For the Government of the Brussels-Capital Region