

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BURUNDI ON THE ONE HAND, AND ON THE OTHER HAND, CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Republic of Burundi, on the one hand, and the Government of on the other hand, hereinafter referred to as "the Contracting Parties,

Desiring to strengthen economic cooperation between the two States, and to create favorable conditions for the realization of investments by nationals of one of the Contracting Parties,

Considering that such a Convention is likely to stimulate private economic initiatives and to strengthen confidence in the field of investments,

Recognizing that discrimination by either contracting party on the basis of nationality against investments made in its territory by investors of the other contracting party is incompatible with any stable investment framework or with the optimal and efficient use of economic resources

Have agreed as follows:

Article 1. DEFINITIONS.

For the purposes of this Agreement:

1. The term "investors" means:

- a) any natural person who, according to the legislation of Burundi, is considered a citizen of or the Republic of Burundi respectively;
- b) any legal entity constituted in accordance with the legislation of or Burundi and having its registered office in the territory of or the Republic of Burundi respectively.

2. The term "national" refers to Burundians within the meaning of the law in force in the Republic of Burundi.

3. The term "company" shall mean any legal person as well as any commercial, civil or other company, association or cooperative, with or without legal personality, having its registered office within the Burundian scope of this Agreement and legally established in accordance with the law, irrespective of whether the liability of its partners, participants or members is limited or unlimited, and whether its activity is for profit or not.

4. The term "investment" means any direct or indirect contribution of capital and assets of any kind, invested or reinvested in any establishment in any sector of economic activity.

In particular, but not exclusively, the following shall be considered investments for the purposes of this Agreement

- (a) movable and immovable property as well as any other real rights such as mortgages, liens, usufructs, pledges, security interests, bonds and similar rights;
- b) shares, share premiums, social shares and other forms of participation in companies;
- c) bonds issued by companies, claims and rights to any benefit with economic value;
- d) intellectual and industrial property rights, such as copyrights, patents, utility models, industrial designs, trade names, technical processes, trademarks and know-how

e) public law or contractual concessions, including concessions in the field of agricultural research, extraction or exploitation of natural resources.

5. "Income" means any amount generated by an investment, including, but not limited to: profits, interest, capital appreciation, dividends, royalties and other remuneration.

No change in the form in which assets and capital are invested or reinvested shall affect their character as "investments" within the meaning of this Agreement.

Article 2. INVESTMENT PROMOTION.

1. Each contracting party shall encourage and admit into its territory, in accordance with its legislation, investments made by investors of the other contracting party and all activities relating thereto.

2. In particular, each Contracting Party shall permit the conclusion and execution of licensing agreements and commercial, administrative or technical assistance agreements, provided that such activities are related to the investments referred to in paragraph 1.

3. This Agreement shall apply to investments and related activities undertaken in the territory of each contracting party by investors of the other contracting party even before its entry into force.

Article 3. PROTECTION OF INVESTMENTS

1. Each contracting party undertakes to ensure in its territory fair and equitable treatment of direct or indirect investments and related activities undertaken by investors of the other contracting party.

2. Such investments and activities shall enjoy continuing security and protection, excluding any unjustified or discriminatory measures which might impede, in law or in fact, their management, maintenance, use, enjoyment or liquidation.

3. The treatment and protection guaranteed in paragraphs 1 and 2 shall be no less favourable than that enjoyed by nationals of the host State of the investment. They shall in any case be at least equal to those enjoyed by investors of the most-favoured nation and in no case less favourable than those recognised by international law.

Article 4. MEASURES DEPRIVING AND RESTRICTING OWNERSHIP.

1. Each contracting party undertakes not to take any measure which deprives or restricts ownership or any other measure having a similar effect in respect of investments located in its territory, except where the imperatives of public utility, security or national interest so require in exceptional cases, in which case the following conditions must be met

(a) the measures are taken in accordance with a legal procedure ;

b) they are neither discriminatory nor contrary to a particular agreement as referred to in Article 7, &3;

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

2. The compensation referred to in paragraph 1(c) shall represent the market value of the investments concerned on the day before the measures are taken or, as the case may be, on the day before they are made public. However, where an investment has no market value or where the investor concerned proves that the market value of the expropriated investments is lower than their real and objective value, the compensation shall be fixed on the basis of the latter value.

Any compensation shall be paid in the currency of the State to which the investor concerned belongs or in any other convertible currency.

It shall be paid without delay, shall be effectively realizable and shall bear interest from the date of expropriation at a reasonable commercial rate.

It is freely transferable.

3. Investors of each contracting party whose investments are damaged by war or other armed conflict, a state of national emergency, disturbances or riots in the territory of the other contracting party, shall be accorded by the latter non-discriminatory treatment at least equal to that accorded to investors of the most favored nation with respect to restitution, compensation, indemnity or other relief.

Compensation due under this paragraph shall be paid in accordance with the provisions of paragraph 2.

4. The treatment referred to in paragraphs 1, 2 and 3 shall apply to investors of each contracting party holding any form of interest, direct or indirect, in any enterprise in the territory of the other contracting party.

5. In all cases, treatment shall be at least equal to that accorded by the host State of the investment concerned to its nationals and shall not be less favorable than that accorded to investors of the most favored nation.

It shall not be less than the treatment accorded under international law.

Article 5. TRANSFERS

1. With respect to investments made in its territory, each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their assets, including, but not limited to

- (a) income as referred to in Article 1, & 3;
- (b) sums required for the repayment of loans duly contracted;
- c) proceeds from the recovery of debts, the total or partial liquidation of investments
- d) indemnities paid in execution of article 4.

2. Each contracting party undertakes to grant the necessary authorizations to ensure the execution of transfers without delay and without any fees or charges other than the usual bank charges.

For the purposes of this Article, any transfer shall be considered to be effected "without delay" if it is effected within the period of time normally required for the completion of the transfer formalities. The time limit shall begin to run on the date of the submission of a request for transfer and shall in no case exceed two months.

3. The transfers referred to in paragraph 1 shall be effected at the exchange rate applicable on the date of transfer under the exchange regulations in force for each category of transaction.

4. The treatment referred to in paragraphs 1, 2 and 3 shall not be less favorable than that accorded to most-favored-nation investors in similar situations.

Article 6. SUBROGATION

1. If, under a legal or contractual guarantee covering non-commercial investment risks, compensation is paid to an investor of one of the contracting parties, the other contracting party shall recognize the subrogation of the insurer in the rights of the indemnified investor.

2. In accordance with the guarantee granted to the investment concerned, the insurer shall be entitled to assert all rights which the investor could have exercised if the insurer had not been subrogated to it.

3. Any dispute between a contracting party and the insurer of an investor of the other contracting party shall be settled in accordance with the provisions of Article 8 of this Agreement.

Article 7. OTHER OBLIGATIONS

1. This Agreement is without prejudice to:

- (a) the laws, regulations, administrative practices or procedures or administrative or judicial decisions of either Contracting Party ;
- (b) international legal obligations;
- (c) obligations undertaken by either Contracting Party, including those contained in any special investment agreement or investment authorization existing either before or after the entry into force of this Convention.

2. Where a matter relating to an investment is governed both by this Convention and by one or more of the provisions referred to in paragraph 1, investors may always avail themselves of the provisions that are more favorable to them.

3. Investors of a contracting party may enter into special agreements with the other contracting party, the provisions of which may not, however, conflict with this Agreement. Investments made under such special agreements shall otherwise be

governed by this Agreement.

Article 8. DISPUTES RELATING TO INVESTMENTS

1. For the purposes of this Article, an investment dispute is defined as a dispute concerning

(a) the interpretation or application of a particular investment agreement between a contracting party and an investor of the other contracting party ;

(b) the interpretation or application of any investment authorization granted by the host State authorities governing foreign investment

(c) the alleged violation of any right conferred or established by this Agreement with respect to investment.

2. Any investment dispute shall be notified in writing, together with a sufficiently detailed investor-initiated aide-memoire from one party, to the other contracting party.

The dispute shall preferably be settled amicably by agreement between the parties to the dispute and, failing that, by conciliation between the contracting parties through diplomatic channels.

3. If the dispute cannot be settled within three months of the written notification referred to in paragraph 1, it shall be submitted, at the request of the investor concerned, for conciliation or arbitration to the International Centre for Settlement of Investment Disputes (ICSID).

To this end, each contracting party hereby gives its prior and irrevocable consent to the submission of any such dispute to ICSID.

This consent implies that each contracting party waives the requirement that domestic administrative or judicial remedies have first been exhausted.

4. Neither of the contracting parties to a dispute may raise any objection, at any stage of any judicial, arbitral or other proceedings and on any grounds whatsoever, to the fact that the investor, as the other party to the dispute, has received compensation covering all or part of its damages, pursuant to an insurance policy or the guarantee provided for in Article 6.

5. The arbitration body shall decide on the basis of

- the national law of the contracting party to the dispute, in whose territory the investment is located, including the rules relating to conflict of laws ;

- the provisions of this Convention

- the terms of any special agreement entered into with respect to the investment

- generally accepted rules and principles of international law.

6. Arbitration awards shall be final and binding on the parties to the dispute.

Article 9. DISPUTES OF INTERPRETATION AND APPLICATION BETWEEN CONTRACTING PARTIES

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultations between the two parties or by any other diplomatic means.

Failing that, the dispute shall be submitted to a joint commission composed of representatives of both contracting parties. The latter shall meet within two months at the request of the more diligent party.

2. If the joint committee is unable to settle the dispute within six months of the date on which the dispute was notified, it shall be submitted to arbitration at the request of one of the contracting parties.

3. In each case, the arbitration tribunal shall consist of three arbitrators: each contracting party shall appoint one arbitrator within two months of the notification of the request for arbitration. The two arbitrators so appointed shall select by mutual agreement a third arbitrator as Chairman, who shall be a national of a third State. The Chairman shall be appointed within two months of the appointment of the other two arbitrators.

A. If the tribunal is not constituted within the time limits prescribed in paragraph 3, each contracting party may, in the

absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments.

If the President is a citizen of one of the contracting parties or if he is prevented from making the necessary appointments, the Vice-President shall be invited to do so. If the Vice President is a citizen of one of the contracting parties or is prevented from acting, the oldest Member of the International Court of Justice who is not a citizen of one of the contracting parties and who is able to act shall be invited to make the necessary appointments.

5. Unless otherwise agreed by the contracting parties, the decision of the arbitral tribunal shall be rendered not later than ten months from the date of its final constitution.

6. The tribunal shall determine its own rules of procedure.

Its decisions shall be taken by majority vote and shall be final and binding on the contracting parties.

7. Each contracting party shall bear the costs of appointing its arbitrator and of representing it in the arbitration proceedings. The costs of appointing the Chairman and the other costs of the proceedings shall be borne equally by the contracting parties.

However, the Tribunal may specify in its decision that a higher share of the costs shall be borne by one of the contracting parties and such decision shall be binding.

Article 10. ENTRY INTO FORCE AND DURATION.

1. This Convention shall enter into force thirty days after the date of exchange of the instruments of ratification. It shall remain in force for an initial period of ten years and shall be tacitly renewed each time thereafter for a further ten years, unless one of the Contracting Parties notifies the other Party of its denunciation through diplomatic channels at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of expiration of this Agreement shall remain subject to this Agreement for an additional period of ten years from the date of expiration.

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

in two originals, in the French language.

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