

# **Agreement on the encouragement and mutual protection of investments between the Kingdom of the Netherlands and the Republic of Burundi**

The Kingdom of the Netherlands,

and

the Republic of Burundi,

hereinafter referred to as the Contracting Parties

Desiring to strengthen their traditional ties of friendship and to develop and intensify their economic relations, in particular as regards investments made by investors of one Contracting Party in the territory of the other Contracting Party

Recognizing that an agreement on the treatment to be accorded to such investments is likely to stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirable,

Being unanimous in the fact that these objectives can be attained without prejudice to the measures applicable in the territory of each of the Contracting Parties for the protection of health, safety and the environment,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

(a) the term "investment" means all classes of assets, and in particular but not exclusively:

(i) movable and immovable property and all rights in rem in respect of all classes of assets;

(ii) rights arising from shares, bonds and other forms of participation in companies and joint ventures

(iii) rights to debt, rights to other assets or rights to any benefits of economic value

(iv) rights in the field of intellectual property, technical processes, goodwill and know-how

(v) rights granted by law or by contract, including concessions granted for prospecting, exploration, extraction and exploitation of natural resources.

(b) the term "investors" includes, for each of the two Contracting Parties:

(i) natural persons having the nationality of that Contracting Party;

(ii) legal persons organized under the law of that Contracting Party; legal persons not organized under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii).

(c) the term "territory" means:

the territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the law of the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned where that Party exercises jurisdiction or sovereign rights.

## **Article 2.**

Each Contracting Party undertakes, within the framework of its laws and regulations, to promote economic cooperation by protecting investments made in its territory by investors of the other Contracting Party. Subject to its right to exercise the powers conferred on it by its laws and regulations, each Contracting Party shall admit such investments.

## **Article 3.**

1. Each Contracting Party undertakes to ensure fair and equitable treatment of investments made by investors of the other Contracting Party and shall not impede, by unjustified or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal of such investments by such investors. Each Contracting Party shall afford such investments full physical security and protection.

2. Each Contracting Party shall in particular accord to such investments treatment in no way less favorable than that accorded to investments made by its own investors or by investors of any other third State, in any case the treatment most favorable to the investor concerned.

3. If a Contracting Party has granted special advantages to investors of a third State under agreements establishing customs unions, economic unions, monetary unions or similar institutions or on the basis of agreements for the establishment of such unions or institutions, that Contracting Party shall not be obliged to grant such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall comply with any obligation it has entered into in respect of investments made by investors of the other Contracting Party.

5. If the legal provisions of one of the Contracting Parties or the obligations arising from international law, now in force or subsequently established, and binding on the Contracting Parties under provisions additional to this Agreement, contain regulations, whether of a general or specific nature, entitling the investments of investors of the other Contracting Party to treatment more favorable than that provided for in this Agreement, such regulations shall prevail over this Agreement insofar as they are more favorable than this Agreement.

## **Article 4.**

As regards taxes, duties and charges, as well as tax deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who have undertaken any economic activity in its territory treatment no less favourable than that which it accords to its own investors or to those of a third State in the same circumstances, in any case the treatment which is most favourable to the investors concerned. However, no account shall be taken in this context of any special tax advantages granted by the said Contracting Party

(a) under a convention for the avoidance of double taxation

(b) by reason of its participation in a customs union, an economic union or a similar institution; or

(c) on the basis of reciprocity with a third State.

## **Article 5.**

The Contracting Parties shall ensure that payments in connection with investment activities may be transferred. Transfers shall be made without restrictions or delays, in a freely convertible currency. Such transfers shall include in particular, but not exclusively

(a) profits, interest, dividends and other current income;

(b) funds needed:

(i) the acquisition of raw or auxiliary materials, semi-finished or finished goods, or

(ii) the replacement of capital equipment to ensure the continuity of an investment;

(c) additional funds required for the development of an investment

(d) funds for the repayment of loans

- (e) royalties or management fees;
- (f) income of individuals;
- (g) proceeds from the sale or liquidation of the investment
- (h) payments resulting from a situation as referred to in Article 7.

## **Article 6.**

No Contracting Party shall take measures against investors of the other Contracting Party which directly or indirectly deprive them of their investments, unless the following conditions are met

- (a) the measures are taken in the public interest and within the framework of the proper administration of justice;
- (b) the measures are not discriminatory or contrary to commitments made by the Contracting Party taking such measures
- (c) the measures shall be taken in return for fair compensation.

Such compensation shall correspond to the actual value of the investment concerned, shall include the payment of interest at the normal commercial rate until the date of payment and, in order to be effective for the claimants, shall be paid and made transferable without delay to the country designated by the claimants concerned and in the currency of the country in which they are investors or in any freely convertible currency accepted by the claimants.

## **Article 7.**

Investors of a Contracting Party who suffer losses in connection with their investments in the territory of the other Contracting Party as a result of war or other armed conflict, revolution, national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party, as regards restitution, damages, compensation or other indemnities, treatment no less favourable than that accorded to investors of that Contracting Party or to investors of any other third State, and in any case the treatment most favourable to the investors concerned.

## **Article 8.**

If the investments of an investor of one of the Contracting Parties are insured against non-commercial risks or are otherwise subject to payment of damages under a system provided for by law, regulation or public contract, any subrogation of the insurer or reinsurer or an agency designated by one of the Contracting Parties in the rights of the said investor, in accordance with the terms of the insurance contracted for or any other compensation granted, shall be recognized by the other Contracting Party.

## **Article 9.**

1. Any dispute relating to an investment between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.
2. If such a dispute has not been settled amicably within three (3) months from the date on which a written request to that effect has been made, it shall be submitted at the request of the investor
  - to the competent court of the Contracting Party in whose territory the investment was made;
  - to the arbitration of the International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre"), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" signed in Washington on March 18, 1965, provided that the Centre is available
  - to an ad hoc arbitral tribunal which, unless otherwise agreed by the parties to the dispute, shall be established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. Each Contracting Party agrees to submit any dispute arising between a Contracting Party and an investor of the other Contracting Party concerning an investment made by such investor in the territory of the other Contracting Party to the courts referred to in paragraph 2 (b) and (c) of this Article.
4. The arbitration award shall be final and binding on the parties to the dispute and shall be enforced in accordance with national law.

5. A juridical person which is a national of one of the Contracting Parties and which, before the dispute arises, is controlled by nationals of the other Contracting Party, shall, in accordance with Article 25, paragraph 2 (b), of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, be deemed to be a national of the other Contracting Party for the purposes of the Convention.

## **Article 10.**

Each Contracting Party may propose to the other Party consultations on any question concerning the interpretation or application of this Agreement. The other Party shall give sympathetic consideration to such a proposal and shall take all appropriate measures to enable such consultations to take place.

## **Article 11.**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled within a reasonable time through diplomatic channels.
2. If the dispute cannot be settled by diplomatic means, it shall, unless the Parties have agreed otherwise, be submitted at the request of either Party to an arbitral tribunal composed of three members.
3. Each Party shall appoint an arbitrator, and the two arbitrators so appointed shall nominate by mutual agreement as their chairman a third arbitrator who shall not be a national of either Party.
4. If one of the parties has not appointed its arbitrator and has not complied with the invitation of the other party to do so within two months, the other party may request the President of the International Court of Justice to make the necessary appointment.
5. If, within two months of their appointment, the two arbitrators have not been able to agree on the choice of the third arbitrator, either Party may request the President of the International Court of Justice to make the necessary appointment.
6. If, in the cases provided for in paragraphs (4) and (5), the President of the International Court of Justice is unable to fulfill the said office or if he is a national of one of the Contracting Parties, the Vice-President shall be requested to make the necessary appointments. If the Vice President is unable to hold office or if he or she is a national of one of the Contracting Parties, the next ranking member of the Court who is not a national of one of the Parties shall be requested to make the necessary appointments.
7. The court shall rule in accordance with the law. Before making its decision, it may, at any stage of the proceedings, propose to the Parties an amicable settlement of the dispute. The foregoing provisions shall not affect the Tribunal's jurisdiction to decide the dispute *ex aequo et bono* if the Parties so agree.
8. The Tribunal shall itself determine the procedure to be followed, unless the Parties agree otherwise.
9. The Tribunal shall make its decision by majority vote. Its decision shall be final and binding on the Parties.

## **Article 12.**

With respect to the Kingdom of the Netherlands, consisting of the part of the Kingdom in Europe, the Netherlands Antilles and Aruba, this Agreement shall apply to each part of the Kingdom of the Netherlands, unless the notification referred to in Article 13, paragraph (1) provides otherwise.

## **Article 13.**

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the formalities required by the Constitution for this purpose have been completed. This Agreement shall remain in force for a period of fifteen years.
2. Unless one of the Contracting Parties gives notice of denunciation at least six months before the expiry of the Agreement, the period of validity of this Agreement shall be tacitly extended for a period of ten years each time, the Contracting Parties reserving the right to denounce the Agreement by notice given at least six months before the expiry of the current period of validity.
3. The foregoing articles shall remain in force for a period of fifteen years from the date of expiry of this Agreement in respect of investments made before the date of expiry.

4. Taking into account the periods referred to in paragraph (2), the Kingdom of the Netherlands shall have the right to terminate the application of this Agreement separately for each of the parts of the Kingdom.

5. The provisions of this Agreement shall also apply, as of the date of its entry into force, to investments made before that date.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE at Bujumbura, this 24th day of May 2007, in two original copies, in the French language.

For the Kingdom of the Netherlands,

B. KOENDERS

For the Republic of Burundi,

A. BATAMUBWIRA