

# **AGREEMENT BETWEEN THE GOVERNMENT OF BURKINA FASO, on the one hand, AND THE BELGO-LUXEMBOURG ECONOMIC UNION, on the other hand, CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS.**

The Government of Burkina Faso on the one hand,

And

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 Walloon Government,

The Flemish Government,

And the Government of the Brussels-Capital Region, on the other hand,

(hereinafter referred to as the contracting parties);

Desiring to intensify economic cooperation by creating 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 "investors" means:

a) "nationals": any natural person who, according to the law of Burkina Faso or of the Kingdom of Belgium and Grand Duchy of Luxembourg is considered as a citizen of Burkina Faso or the Kingdom of Belgium and Grand Duchy of Luxembourg respectively and making an investment in the territory of the State of the other Contracting Party in accordance with this Agreement.

b) "companies", i.e. any legal person constituted under the laws of Burkina Faso or of the Kingdom of Belgium and Grand Duchy of Luxembourg and having its registered office in the territory of Burkina Faso or the Kingdom of Belgium and Grand Duchy of Luxembourg respectively and making an investment in the territory of the State of the other Contracting Party in accordance with this Agreement.

2. The term "investment" means every asset any and all direct or indirect, in cash or in kind, invested or reinvested services in any sector of the economy.

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

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

b) Shares, stocks and any other forms of participation, or even indirect minority, in companies formed in the territory of one of the contracting parties;

- c) The obligations and rights, claims to any performance having an economic value;
- d) Intellectual property rights, such as copyrights, patents, industrial designs, trademarks, trade names, know-how, goodwill and other similar rights recognized by the national laws of each Contracting Party;
- e) The concessions under public law or contract including those relating to prospecting or exploitation, extraction of natural resources.

Any alteration of the form in which assets and capital invested or reinvested does not affect their status as investments within the meaning of this Agreement.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties or fees.

4. The term "territory" means:

- a) In respect of Burkina Faso; the territory under its sovereignty, including the territorial sea and underwater areas and other maritime and air space over which the mainland exercises in accordance with international law, sovereign rights or jurisdiction.
- b) As regards the Belgo-Luxembourg Economic Union, the term "territory" shall apply to the territory of the Kingdom of Belgium, in the territory of the Grand Duchy of Luxembourg as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the State concerned and upon which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for 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 admit such investments in accordance with its legislation.
2. In particular, each Contracting Party shall permit 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.

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

1. All direct or indirect investments made by investors of either Contracting Party shall enjoy, in the territory of the other contracting party fair and equitable treatment.
2. Subject to the measures necessary for the maintenance of public order, such investments will enjoy a constant protection and security, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, management, maintenance, use, enjoyment or disposal of such investments.
3. The treatment and protection referred to in paragraphs 1 and 2 shall be at least equal to those enjoyed by investors of a third country and shall in no case be less favourable than those accorded by international law.
4. However, such treatment and such protection does not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, common market or any other form of regional economic organization.

## **Article 4. Compensation for Expropriation, Nationalization and Losses**

1. Each Contracting Party undertakes not to take any measure of expropriation or nationalization or any other measure the purpose of which is directly or indirectly dispossessing investors of the other contracting party of their investments in its territory.
2. If the requirements of public security or national interest justify derogation from paragraph 1, the following conditions must be met:
  - a) The measures shall be taken under due process;
  - b) They are neither discriminatory nor contrary to a specific commitment;
  - c) They shall be accompanied by provisions for the payment of adequate and effective compensation.

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 compensations shall be paid in the currency of the State of which the investor is a national or in any other convertible currency. They shall be made without delay and freely transferable. It shall include interest at a normal commercial rate from the date of the establishment of the amount until the date of payment.

4. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other contracting party benefit, on the part of this latter, from a treatment not less than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

5. For the matters governed by this article, each Contracting Party shall accord to investors of the other contracting party treatment not less than that which the reservation in its territory for investors of the most favoured nation. This treatment shall in no case be less favourable than that recognised by international law.

## **Article 5. Transfers**

1. Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of all payments relating to an investment, and in particular:

- a) In relation to establish and maintain or expand the investment;
- b) Amounts intended for the payment of contractual obligations, 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 personnel;
- c) Investment income;
- d) The proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;
- e) Compensation paid pursuant to article 4.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment in the territory of the other Contracting Party shall also be authorised to transfer appropriate a proportion of their earnings to their country of origin.

3. The transfers shall be made in a freely convertible currency, on applicable at the date of the latter to spot transactions in the currency used.

4. Each Contracting Party shall issue the required authorisations to ensure the execution of transfers without undue delay and without any fees or other charges that the usual costs.

5. The guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation.

## **Article 6. Subrogation**

1. If one of the Contracting Parties or a public body thereof pays compensation to its own investors from a guarantee given in respect of an investment, the other Contracting Party shall recognise that the rights of the investors are transferred to the Contracting Party or public body concerned, in their capacity as insurer.

2. In respect of the rights transferred, the other Contracting Party may enforce against the insurer subrogated to the rights of the indemnified investors the obligations which the latter have by law or contract.

## **Article 7. Applicable Rules**

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or international obligations existing at present or future by the parties, investors of the other contracting party may avail itself of the provisions that are most favourable.

## **Article 8. Specific Agreements**

1. Investments covered by a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall at all times ensure respect the obligations it has entered into in respect of investors of the other contracting party.

## **Article 9. Settlement of Disputes Relating to Investments**

1. Any investment dispute which may arise between an investor of one Contracting Party and the other Contracting Party shall be subject to a written notification accompanied by an aide-memoire sufficiently detailed by the most expeditious party. To the extent possible, the parties will endeavour to resolve the dispute through negotiations, a professional opinion possible use of a third party, or by conciliation between the Contracting Parties through diplomatic channels.

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

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

3. In the event of recourse to international arbitration, the dispute shall be submitted to an arbitral institutions described below, at the choice of the investor:

- to an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL);

- 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 would be a member thereof. as long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the ICSID Additional Facility Rules;

- The Court of Arbitration of the International Chamber of Commerce in Paris;

- to the Arbitration Institute of the Stockholm Chamber of Commerce.

If the arbitration procedure has been introduced on the initiative of a Contracting Party, it shall invite in writing of the investor concerned to express his choice in the arbitration body which shall be seized of the dispute.

4. Neither of the Contracting Party, Party to the dispute raise objection shall not, at any stage of the arbitration proceedings or enforcement of an arbitration 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.

5. The arbitral tribunal shall decide on the basis of the domestic law of the Contracting Party to the dispute Party in whose territory the investment was made, including the rules relating to conflicts of law, as well as on the basis of the provisions of this Agreement, the terms of any specific agreement concluded in relation to investment and the Principles of International Law

6. The arbitration 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 10. National Treatment and Most Favoured Nation**

For all matters relating to the treatment of investments of investors of either Contracting Party shall enjoy, in the territory of the other party, the most-favoured-nation treatment.

As regards the exploitation, management, maintenance, use, enjoyment, sale or other disposition of investments, each Contracting Party shall accord to investors in its territory of the other Contracting Party a treatment which shall not be less favourable than that it accords to its own investors to investors or of any third State if such treatment is more favourable.

Such treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, common market or any other form of regional economic

organization.

The provisions of this article shall not apply to tax matters.

## **Article 11. 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, if possible, be settled through diplomatic channels.

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

3. If the Joint Commission cannot settle the dispute within a period of six months, it shall be submitted, at the request of either of the contracting parties to an arbitral tribunal constituted for each individual case in the following way:

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 two months after their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State who will serve as the Chairman of the arbitral tribunal.

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 or the necessary appointments (s).

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which either contracting party does not maintain diplomatic relations 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 necessary appointments or appointment (s).

If the Vice-President is a national of either Contracting Party or if he is prevented from exercising his mandate, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

4. The Court 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 costs of the Tribunal shall be borne in equal parts by the contracting parties.

## **Article 12. Previous Investments**

This Agreement shall also apply to investments made prior to 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. however, this Agreement shall not apply to disputes which occurred prior to its entry into force.

## **Article 13. Entry Into Force and Duration**

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.

It may be revised in writing at the request of either contracting party (i) twelve months after notification to the other Contracting Party.

Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each contracting party reserving the right to terminate the agreement by a notification made at least six 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 submitted for a period of ten years from that date.

Done at Brussels on 18 May 2001, all texts being equally authentic. The French text shall prevail in case of divergence of interpretation.

FOR THE GOVERNMENT OF BURKINA FASO, THE MINISTER OF TRADE, ENTERPRISE PROMOTION AND HANDICRAFTS.

Bedouma Alain YODA

Officer of the National Order

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION

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

FOR THE WALLOON GOVERNMENT:

FOR THE FLEMISH GOVERNMENT:

FOR THE GOVERNMENT OF THE REGION OF BRUSSELS CAPITAL: