

# **Agreement between the Belgian-Luxembourg Economic Union and the People's Democratic Republic of Algeria 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, and the Government of the People's Democratic Republic of Algeria,

Desiring to intensify economic cooperation by creating favourable conditions for the achievement of 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" i.e. means any natural person who, according to the Law of the Contracting States, is considered as a citizen of Belgium, Luxembourg or Algerian nationality;

b) "companies", i.e., any legal person constituted under the laws of Belgium or Luxembourg, Algeria, and having its registered office in the territory of Belgium, Luxembourg or of Algeria.

2. The term "investments" means any kind of assets and any direct or indirect contributions in cash or in kind or in services, invested or reinvested 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, usufructs and similar rights;

b) Shares, stocks and any other forms of participation, even indirect minority, or to companies established in the territory of one of the Contracting Parties;

c) The obligations and rights, claims to any performance having an economic value;

d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

e) The concessions under public law or contract (including those relating to prospecting, culture, extract or exploit natural resources) in relation to the rights arising directly agreements entered into between the investor and the licensor concessionaire.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their classification as equal  $\geq$  investment within the meaning of this Agreement.

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

## **Article 2. Investment Promotion**

Each Contracting Party shall encourage equal investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its legislation.

Among other measures to encourage investments, each Contracting Party authorizes the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, provided that these activities have a bearing on the investments.

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

1. All investments made directly or indirectly by investors of one of the Contracting Parties shall, in the territory of the other Contracting Party fair and equitable treatment.
2. Subject to the measures necessary for the maintenance of public order, these investments shall enjoy 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.
3. The treatment and protection defined in paragraphs 1 and 2 of this article 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, this treatment and protection shall 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 organizations.

### **Article 4. Deprivation or Restriction of Property**

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 own investments in its territory.
2. If the requirements of public security or national interest justify derogation from paragraph 1, the following conditions shall be complied with:
  - a) The measures shall be taken under due process;
  - b) They are neither discriminatory nor contrary to a specific commitment;
  - c) They are accompanied by provisions for the payment of adequate and effective compensation.
3. The amount of compensation will correspond to the real value of the investment concerned to be equal before the date on which the measures taken or to be made public.

The compensation shall be paid in a freely convertible currency to be agreed, preferably in the State in which the investor.

They shall be made without delay and freely transferable. In the event of late payment, they shall include interest at the official rate of the Special Drawing Right, on the date of its receipt as determined by the International Monetary Fund.

4. For the matters governed by this article, each Contracting Party shall accord to investors of the other party treatment no 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 in whose territory the investment equal  $\geq$  have been made by investors of the other Contracting Party shall grant those investors the free transfer of their liquid assets and in particular:
  - a) The return of investments, including profits, interests, dividends, royalties, capital;
  - b) The amounts required for the repayment of loans contracted regularly;
  - c) Claims of the recovery of the proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;
  - d) Compensation paid pursuant to Article 4;
  - e) Royalties and other payments deriving from the licence fees and commercial or administrative assistance.
2. The nationals of either Contracting Party who are authorised to work under a investment agrees on the territory of the

other Contracting Party shall also be authorised to transfer to their country of origin an appropriate proportion of their remuneration.

3. The transfers referred to in paragraphs 1 and 2 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. 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.

The guarantees provided for by this Article shall be at least equal to those accorded to investors in like circumstances of the most favoured nation.

## **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 shall acknowledge that the rights of the indemnified investors have been transferred to the contracting party or to the public body, as the insurer.

In the same way as investors, and within the limits of the rights so transferred, the insurer may, by virtue of subrogation to exercise the rights and assert the claims of investors and those relating thereto.

The rights of subrogation shall also apply to the transfer of rights and to arbitration referred to in Articles 5 and 9.

These rights and actions may be exercised by the insurer 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.

2. As far as the transferred rights, the other Contracting Party shall be entitled to plead against the insurer, subrogated into the rights of the investors indemnified the obligations under a legal or contractual relationship with them.

## **Article 7. Applicable Rules**

Where a matter relating to investments simultaneously is governed by this Agreement and by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other contracting party may avail itself of the provisions which are more favourable.

## **Article 8. Specific Agreements**

1. The investments which has been the subject of 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 compliance with the commitments it has made to investors of the other Contracting Party.

## **Article 9. Settlement of Investment Disputes**

1. Any dispute concerning investments between a Contracting Party and an investor of the other Contracting Party shall be notified in writing by the most expeditious party.

To the extent possible, the dispute shall be settled amicably between the parties to the dispute.

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 request of either party, to the dispute to arbitration by 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, 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.

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. 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 to the dispute, be collected compensation 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 arbitral 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 the investment, as well as the Principles of International Law.

5. The arbitration awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the award according to its national law.

## **Article 10. Most Favoured Nation**

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

## **Article 11. Disputes of Interpretation or Application of the Contracting Parties**

1. Any dispute concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. In the absence of rules through diplomatic channels within six months from the date on which it was raised, the dispute shall be submitted, at the request of either of the Contracting Parties; arbitration proceedings implementation, 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 shall be the Chair of the arbitral tribunal.

If the time limits have not been made, either Contracting Party may invite the Secretary-General to appoint the arbitrator or arbitrators not appointed.

If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Under-Secretary-General will be invited to make the appointment.

3. The Court thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of votes; they shall be final and binding on the Contracting Parties.

Where appropriate, either Contracting Party may invite the arbitral tribunal to confirm the interpretation of its decisions.

4. Each Contracting Party shall bear the costs of its appointed arbitrator. unless the Tribunal provides otherwise, 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, provided that the said investments are in conformity with the laws and regulations of the latter party, which was in force at the date of signature of the Agreement.

## **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 remains in force for a period of ten years.

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 reserves 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. The investments made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from that date.

Done at Algiers on 24 April 1991, each in two originals in the Arabic, Dutch and French languages, all texts being equally authentic.

For the Belgo-Luxembourg Economic Union, Robert Urbain, the Minister of Foreign Trade.

For the Government of the People's Democratic Republic of Algeria: Smail Goumeziene, Delegate Minister to the Trade Organization.