

CONVENTION BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE RWANDESE REPUBLIC CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Belgium, acting both on its own behalf and on behalf of the Grand Duchy of Luxembourg, under existing agreements, and

The Government of the Rwandese Republic,

Desiring to create favourable conditions for greater economic co-operation between them and, in particular, for investments by nationals of either Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement and protection of such investments may stimulate private economic initiatives and increase economic prosperity in the territories of the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Convention:

1. The term "nationals" shall mean:

(a) With regard to the Belgo-Luxembourg Economic Union, any individual who under Belgian or Luxembourg law is considered to be a citizen of Belgium or Luxembourg;

(b) With regard to Rwanda, any individual who under Rwandese law is considered to be a citizen of the Rwandese Republic.

2. The term "companies" shall mean:

(a) With regard to the Belgo-Luxembourg Economic Union, any corporation under private law constituted in accordance with Belgian or Luxembourg law and having its head office in the territory of Belgium or Luxembourg;

(b) With regard to the Rwandese Republic, any corporation under private law constituted in accordance with the legislation in force in Rwanda and having its head office in Rwanda.

3. The term "investments" shall mean any direct or indirect medium or long term contribution of movable or immovable property intended for the development of an economic activity acknowledged to be in the national interest at the time the contribution is made under the laws of the State in whose territory such contributions are made.

The following shall more particularly be considered investments within the meaning of this Convention: (a) Movable property and any other right in rem, such as mortgages, securities and security interests;

(b) Bonds, shares and company shares as well as any other kinds of interest in companies;

(c) Claims and rights to any benefits having economic value;

(d) Copyrights, industrial rights, technical processes, trade marks and business assets;

(e) Business concessions under public law or by contract, including concessions in respect of agricultural research and the extraction or exploitation of natural resources.

No change in the form in which assets have been invested shall affect their status as "investments" for the purposes of this Convention. Investments made before the entry into force of this Convention shall not be covered by it.

Article 2. Promotion of Investments

Each Contracting Party shall admit to its territory in accordance with its law investments by individuals or corporations under private law of the other Contracting Party, and shall encourage such investments.

Article 3. Protection of Investments

1. All investments made by individuals or corporations under private law of one Contracting Party shall be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. In accordance with prevailing laws and regulations, such investments shall be safeguarded and protected at all times and shall not be subject to any unreasonable or discriminatory measure that might, de jure or de facto, impede their management, maintenance, use, enjoyment or liquidation.
3. No provision of this Convention shall prevent the Contracting Parties from concluding specific arrangements with a particular investor on the basis of the legislation of either Party, particularly on the basis of the Investment code in the case of Rwanda.
4. The treatment and protection guaranteed in paragraphs 1 and 2 of this article shall be no less favourable than those enjoyed by individuals or corporations under private law of a third State.
5. Nevertheless, the treatment and protection referred to in paragraph 4 of this article shall not include privileges which may be extended by either Contracting Party under agreements concluded in connection with its participation in an international organization of a regional character, a free trade area, a customs union or a common market. Neither shall they include benefits which may be conferred by either Contracting Party on a neighbouring country or a third developing country.

Article 4. Expropriatory and Restrictive Measures In Respect of Property

1. Each Contracting Party undertakes to refrain from any expropriatory or restrictive measure in respect of property against investments situated in its territory.
2. Should considerations of public interest necessitate a derogation from paragraph 1 and should such measures be taken exceptionally, the following conditions must be fulfilled:
 - (a) The measures shall be taken in accordance with the legal procedures;
 - (b) They shall not be discriminatory;
 - (c) They shall be accompanied by provisions for the payment of an adequate and effective compensation.
3. Unless the opposing Party provides justification to the contrary, the compensation established under paragraph 2 above shall represent the market value of the investments on the day prior to the adoption of the measures or, where appropriate, the day prior to their publication.
4. If one Contracting Party expropriates the assets of a company established in its territory in which individuals or corporations under private law of the other Contracting Party hold shares, it shall apply the provisions of paragraphs 1, 2 and 3 of this article to the individuals or corporations under private law of the other Contracting Party that owns those shares.

Article 5. Transfers

1. With respect to investments made in its territory, each Contracting Party shall guarantee to investors of the other Contracting Party freedom of transfer of their assets, including but not restricted to:
 - (a) Investment income and royalties;
 - (b) Sums required for the reimbursement of duly contracted loans;
 - (c) Proceeds from the recovery of debts or the total or partial liquidation of investments;
 - (d) Compensation paid under article 4.
2. Each Contracting Party shall issue the authorizations required to ensure the execution of such transfers without fees or

charges other than the usual banking charges.

Article 6. Exchange Rates

1. The transfers referred to in articles 4 and 5 shall be effected at the exchange rates applicable on the date of the transfer in accordance with the exchange regulations in force in the country making the transfers, and taking into account the usual fees and charges.

2. These rates shall in no case be less favourable than those accorded to individuals or corporations under private law from third countries under, for instance, specific commitments contained in any investment protection agreements or arrangements.

Article 7. Subrogation

1. If, by virtue of a guarantee given for an investment, one Contracting Party or a public agency of that Party makes payments to its own nationals, the other Contracting Party shall recognize the right of the first Contracting Party or of the public agency concerned to exercise and invoke by means of subrogation the rights and claims of such nationals.

2. Such payments by either Contracting Party or a public agency of that Party shall in no case affect the right of nationals of that Party to institute proceedings before the International Centre for Settlement of Investment Disputes, in accordance with article 10 of this Agreement, nor the right of such nationals to pursue any proceedings until the dispute is settled.

Article 8. Other Obligations

Without prejudice to the other provisions of this Convention, all investments shall be governed by the legislation in force in the territory of the Contracting Party in which the investments are made.

This Convention shall not affect the more favourable treatment which may be accorded in respect of investments under the laws and regulations of the State in whose territory the investments were made.

Article 9. Special Agreements

Investments made under a special agreement between one Contracting Party and investors of the other Party shall be governed by the provisions of this Convention and of the aforementioned special agreement. It shall be understood that no special agreement may contradict the provisions of this Convention.

Article 10. Recourse to the International Centre for Settlement of Investment Disputes

1. Any investment dispute between one Contracting Party and an investor from the other Contracting Party shall, to the extent possible, be resolved amicably between the parties to the dispute.

2. Any such dispute may be brought before the national courts of the country in which the investment is made.

3. If any such dispute between an investor from one Contracting Party and the other Contracting Party cannot be settled in a satisfactory manner after all administrative and judicial remedies available under the legislation of the Contracting Party in whose territory the investment was made have been exhausted, the Contracting Parties shall recognize the right of each party to the dispute to initiate before the International Centre for Settlement of Investment Disputes, in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965,⁽¹⁾ the procedure set out in that Convention so that the dispute may be settled by conciliation or arbitration.

To this end, each Contracting Party hereby gives its irrevocable advance consent to the submission of any dispute to the Centre. 4. However, the condition referred to in paragraph 3 of this article concerning the exhaustion of the administrative and judicial remedies available under the legislation of the Contracting Party in whose territory the investment was made cannot be invoked by that Party against the investor from the other Party later than 18 months from the date of the written notification, accompanied by a sufficiently detailed memorandum, from the investor of one Contracting Party to the other Contracting Party.

5. As of the date on which a procedure for conciliation or arbitration is initiated after the 18-month time-limit set out in paragraph 4 has expired, each party to a dispute concerning an investment shall take all necessary steps to have the legal proceedings withdrawn from the courts of the country in which the investment was made.

6. In all cases, the rules applicable to conciliation or arbitration shall be the national law of the Contracting Party which is a party to the dispute, including the rules concerning conflict of laws, the provision of this Convention and the principles of international law governing this issue.

7. Each Contracting Party shall agree to implement the decision handed down by the International Centre for Settlement of Investment Disputes.

Article 11. Most Favoured Nation

In all matters governed by this Convention, nationals or companies of both Contracting Parties shall enjoy, in the territory of the other Party, most-favoured-nation treatment, subject to the exceptions set out in article 3, paragraph 5.

Article 12. Disputes between the Contracting Parties Concerning the Interpretation of the Convention

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Convention shall be settled, to the extent possible, by a Joint Commission consisting of representatives of the two Contracting Parties.

2. If the dispute cannot be resolved by the Joint Commission provided for in paragraph 1 of this article within six months of the written notification by one of the Contracting Parties, it shall be submitted to arbitration at the request of either Contracting Party. The arbitral tribunal (hereinafter referred to as "the tribunal") shall consist of three arbitrators, one to be appointed by each Contracting Party and the third, who shall be the President of the tribunal, appointed by mutual agreement by the Contracting Parties.

3. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of the appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

4. If the tribunal has not been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators that have not been appointed.

If the President is a national of either Contracting Party and is therefore unable to do so, the Vice-President may be invited to do so in his stead. If the Vice-President is a national of either Contracting Party and is therefore unable to do so, the senior member of the International Court of Justice who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on. 5. The tribunal shall adopt its own rules of procedure.

6. The tribunal's decisions shall be final, and the Contracting Parties shall abide by and comply with the terms of its decision.

7. Each Contracting Party shall bear the costs resulting from the appointment of its own member of the tribunal and of its representation in the arbitration proceedings. The costs resulting from the appointment of the President and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs be borne by one of the Contracting Parties, and this decision shall be binding on both Parties.

Article 13. Entry Into Force and Duration

1. This Convention shall enter into force on the first day of the second month following the date on which the two Contracting Parties have notified each other of the completion of their respective constitutional procedures, and shall remain in force for a period of five years.

Unless one Contracting Party gives notice of termination at least six months prior to the expiry of the period of validity, this Convention shall be tacitly renewed for successive five-year periods, each Contracting Party reserving the right to terminate the Convention by giving notice at least six months prior to the date of expiry of the current period.

2. In respect of investments made prior to the date of expiry of this Convention, the above articles of this Convention shall remain in force for a further period of five years from that date.

In Witness Whereof the undersigned representatives, duly authorized by their respective Governments, have signed this Convention.

Done at Kigali, on 2 November 1983, in two original copies in the French language.

For the Belgo-Luxembourg Economic Union: [Signed] H.E. Mr. LEO TiNDEMANS Minister for Foreign Affairs

For the Government of the Rwandese Republic: [Signed] H.E. Mr. FRANCOIS NGARUKIYINTWALI Minister for Foreign Affairs and Co-operation