

# **AGREEMENT BETWEEN THE BELGIAN-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE REPUBLIC OF CUBA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the

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

The Government of the Brussels-Capital Region,

On the one hand,

And

The Government of the Republic of Cuba

On the other hand,

Hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors 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 "investor" means:

a) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Cuba is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Cuba respectively;

b) "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Cuba respectively.

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, 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 under contract, including those relating to search for, extract, develop or exploit natural resources.

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

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

4. The term "territory" shall apply to the territory of the Kingdom of Belgium, in the territory of the Grand Duchy of Luxembourg and the territory of the Republic of Cuba as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the States 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, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, management, maintenance, use, enjoyment or disposal of such investments.

2. The treatment and protection referred to in paragraph 1 of this article shall be at least equal to those enjoyed by investors of a third State and shall in no case be less favourable than those accorded by international law.

3. 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. 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 investments in its territory.

2. If the requirements of public security or national interest justify derogation from paragraph 1 of this article, 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 shall be accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation shall be commensurate with the actual value of the investment immediately before the date on which the measures taken or to be made public.

Such compensation 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 paid without delay and be 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, a state of emergency or national revolt in the territory of the other Contracting Party benefit, on the part of this latter, from a treatment as regards, restitution, indemnification, compensation or other indemnities, which shall be at least equal to that accorded by the latter Contracting Party to investors of the most favoured nation.

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 effected without delay in the convertible currency in which the capital was originally invested in convertible currency or any other agreed to by the investor and the Contracting Party concerned. Unless otherwise agreed with the investor transfers shall be conducted in the course of exchange applicable on the date of transfer and in accordance with the foreign exchange regulations in force.

4. Each Contracting Party shall issue the required authorisations to ensure the execution of 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 agency thereof pays compensation to its own investors under a guarantee covering non-commercial risks related to an investment, the other Contracting Party shall recognize that the first contracting party or the public body is subrogated into the rights of the investor.

2. As far as the transferred rights, the other Contracting Party may claim 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 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 contracting 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 Contracting 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 Investment Disputes**

1. Any investment dispute 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 negotiation 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:

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 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. No Contracting Party, party to a dispute, shall raise any objection, at any stage of the arbitration proceedings or of the enforcement of an arbitration award, that the investor, adverse party to the dispute, has received compensation covering all or part of its losses under an insurance policy or under 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 Party in whose territory the investment dispute is located, 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. 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 contracting party, the most favoured nation treatment.

## **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 shall be submitted, at the request of either contracting party 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).

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. It shall not apply to any dispute or differences 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.

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 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. In respect of investments made prior to the date of termination of this Agreement, the provisions of the latter they shall continue to apply for a period of ten years from the date of expiry.

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

Done at Brussels, 19 May 1998 in two originals, each in French, Dutch, English and Spanish, all texts being equally authentic. The English text will prevail in case of divergence of interpretation.

For the Belgium-Luxembourg Economic Union

For the Government of the Kingdom of Belgium acting on its behalf and on behalf of the Government of the Grand Duchy of Luxembourg:

For the Government of the Walloon Region

For the Government of the Flemish Region

For the Government of the Brussels-Capital Region

For the Government of the Republic of Cuba