

# **AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION, on the one hand, and THE TOGOLESE REPUBLIC, on the other hand, CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Kingdom of Belgium,

The Walloon Region

The Flemish Region,

And the Brussels-Capital Region; and

The Grand Duchy of Luxembourg on the one hand,

And

The Togolese Republic, of the other part,

(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;

Recognizing the need to protect investments made by investors of each of the two contracting parties and to stimulate the flow of investment and private initiatives in respect of matters with a view to promoting economic prosperity of both contracting parties;

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 Togolese Republic, is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Togolese Republic 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 Togolese Republic and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Togolese Republic, 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, 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) Copyrights, industrial property rights, technical processes, trade names and goodwill;

e) The concessions under public law or under contract, including those relating to prospecting, culture, extract or exploit 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, profits, capital increases interests, 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 Togo 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.

5. The term "environmental law" means the laws and regulations in force in the contracting parties or any provision in those laws and regulations, who focus primarily on the protection of the environment or the prevention of a danger to the life or health human, animal or plant by the following means:

a) prevention, reduction or control of discharge, dumping or emission of pollutants or environmental pollutant products;

b) control of chemical substances, materials or toxic and hazardous wastes on environment and dissemination of information related thereto;

c) the protection or conservation of wild flora and fauna, including endangered species and their habitats, and specially protected natural areas in the territory of the Contracting Parties.

6. The term "labour laws" means the laws and regulations in force in the Contracting Parties or any provision in those laws and regulations that are directly related to internationally recognized labour rights set out below:

a) the right of association;

b) the right to organise and to bargain collectively;

c) the prohibition on the use of any form of forced or compulsory labour;

d) minimum age for admission to employment;

e) acceptable conditions of work with respect to minimum wages and working hours, as well as the health and safety of workers.

## **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.

3. The Contracting Parties may, in case needed, exchange of information on investment opportunities in their respective territories, to assist the economic operators to identify the most profitable niche markets for both contracting parties.

## **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 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.

## **Article 4. National Treatment and Most Favoured Nation**

1. For all matters relating to the treatment of investments of investors of either Contracting Party shall enjoy, in the territory of the other party, of national treatment and most-favoured-nation treatment.
2. As regards the use, 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.
3. 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 organisation existing or future.
4. The provisions of this Article shall not apply to tax matters.

## **Article 5. Environment**

1. Recognising that each Contracting Party has the right to establish its own levels of environmental protection and determine its policies and priorities and the matters of environment and development and to adopt or modify laws accordingly its ad hoc, each Contracting Party shall endeavour to ensure that its legislation will ensure a high level of environmental protection and shall make every effort to constantly improve that legislation.
2. The Contracting Parties recognise that it is inappropriate to ease the domestic legislation in the field of environment in order to encourage investment. In this regard, each Contracting Party will ensure that it is not granted exemption or derogation from any other way to such legislation, nor be offered opportunities for exemption or derogation to promote the establishment, maintenance or expansion of an investment in its territory.
3. The Contracting Parties reaffirm their commitments under international agreements in the field of environment. They shall ensure that such commitments are fully recognized and applied in accordance with their national legislation.
4. The Parties recognise that enhanced mutual cooperation provides opportunities to improve environmental standards. At the request of one of the Parties, the parties agree that the representatives of their Governments shall meet for consultations on any matière falling within the scope of this Article.

## **Article 6. Labour**

1. Recognising that each Contracting Party has the right to set its own standards of labour protection and to adopt or amend its appropriate laws accordingly, each Contracting Party shall ensure that its laws and regulations lay down labour standards consistent with the universally recognised rights of workers set forth in paragraph 6 of Article 1, and shall continuously improve such standards.
2. The Contracting Parties recognise that it is inappropriate to ease labour legislation in order to encourage investment. In this regard, each Contracting Party will ensure that it is not granted exemption or derogation from any other way to such legislation, nor be offered opportunities for exemption or derogation to promote the establishment, maintenance or expansion of an investment in its territory.
3. The Contracting Parties reaffirm their obligations as members of the International Labor Organization as well as that their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up. The Contracting Parties shall ensure that the universally accepted principles and rights of workers set forth in paragraph 6 of Article 1 are recognized and protected in their domestic legislation.
4. The Parties recognise that enhanced mutual cooperation provides opportunities to improve labour standards of protection. At the request of one of the Parties, the other Party shall accept that representatives of their Governments shall meet for consultations on any matter falling within the scope of this Article.

## **Article 7. 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 of investors of the other Contracting Party of their investments in its

territory.

2. If the requirements of public security or national interest justify a 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 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 are taken or to be made public.

The compensations shall be paid in the currency of the Member 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 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 at least equal to that accorded to 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 8. 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 7.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment in the territory of the Contracting Party shall also be authorized to transfer an appropriate 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 other charges than the usual bank charges.

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

## **Article 9. 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 recognize that the investor rights are transferred to the Contracting Party or to the public body, as the insurer.

2. As far as the transferred rights, the other Contracting Party may claim against the insurer subrogated into the rights of the compensated investor legal or contractual obligations.

## **Article 10. Applicable Rules**

Where a matter relating to investment is *règle* both by this Agreement and 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 11. 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 12. Settlement of Investment Disputes**

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 and 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 was *réalisé* *ou* investment 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:

- In 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;
- The Common Court of Justice and arbitration established by the Treaty for the harmonisation of Business Law in Africa (OHADA).

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

4. Neither of the Contracting Parties, a party to a dispute, shall raise an objection, 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 9 of this Agreement.

5. The arbitral tribunal shall decide on the basis of the domestic law of the Contracting Party, party to the dispute, 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 13. 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 one or the other 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 necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or 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.

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 14. Previous Investments**

This Agreement shall also apply to investments made prior to its entry into force by investors of one of the Contracting Parties on the territory of the other Contracting Party in accordance with the laws and regulations of the latter.

## **Article 15. 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 twelve months prior to the expiry 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 moms in 12 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.

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

Done at Lomé, on 06 June 2009. 2009 in two originals in French and Dutch language, both texts being equally authentic. The French text shall prevail in case of divergence of interpretation.

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION:

For the Kingdom of Belgium:

For the Walloon Region:

For the Flemish Region:

For the Brussels-Capital Region:

For the Grand Duchy of Luxembourg:

Michel Dewez

Belgian Ambassador

FOR THE TOGOLESE REPUBLIC:

Koffi Essaw

Minister of Foreign Affairs and Regional Integration