

# **AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE STATE OF KUWAIT CONCERNING 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,

The Walloon Government,

The Flemish Government,

And the Government of the Brussels-Capital Region,

On the one hand,

And

The Government of the State of Kuwait

On the other hand

(hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection of such investments will stimulate trade initiatives and to increase prosperity of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every right or any asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, including the assets or rights which consists of the following or in the form of:

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

(b) Company shares, stocks and other forms of equity participation in a company; debentures and other debt instruments of a company; other instruments of credit and loans and securities issued by any investor of one or the other contracting party;

(c) Any assets and money claims and rights to any performance under contract having an economic value;

(d) Intellectual property rights, including, but not limited to, copyrights, trademarks, patents, industrial processes, designs and technical know-how, trade secrets, trade names and goodwill;

(e) All rights conferred by law, by contract or by virtue of any licenses or permits granted pursuant to law, including those relating to prospecting, exploration, extraction or use of natural resources, as well as any rights conferred to any other economic or commercial activity or the provision of services.

The term "investment" includes the undistributed "income" intended to be reinvested, as well as any "liquidation" according to the meaning given in the definitions below. Any alteration of the form in which assets have been invested or reinvested does not affect their status as investments.

2. The term "investor" refers to either Contracting Party:

(a) A natural person possessing the nationality or citizenship of that Contracting Party, in accordance with its applicable laws;

(b) Any legal person constituted or organized in accordance with the laws and regulations of the Contracting Party concerned, such as development agencies, funds, agencies, foundations, the official organs and bodies, as well as the companies;

(c) In the case of the State of Kuwait and the Government of the State of Kuwait.

3. The term "companies" shall mean any legal person, whether for profit, owned or controlled by private persons or by public authorities established in accordance with the legislation of either Contracting Party or is owned or under the effective management of investors of either Contracting Party, and comprises companies, trusts, partnerships, individual companies, subsidiaries, joint ventures, associations and other similar organizations.

4. The term "income" means any sum produced by an investment, irrespective of the form in which payment is made and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties, fees, remunerations, technical assistance or other fees and payments in kind of any kind.

5. The term "liquidation" means any form of alienation of goods in order to dispose of an investment in whole or in part.

6. The term "territory" means the territory of either Contracting Party, including any area extending beyond the territorial sea which has been defined in accordance with international law as an area over which either contracting party exercises its sovereign rights or jurisdiction or which may be established in the future as such in accordance with the legislation of either Contracting Party.

7. The term "freely convertible currency" means any currency designated from time to time by the International Monetary Fund as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

8. The term "without delay" means the period normally provided for the completion of formalities necessary for the transfer of payments. The said period shall be the day on which the request for transfer has been submitted and on no account may exceed one month.

## **Article 2. Acceptance and Encouragement of Investments**

1. Each Contracting Party shall admit and encourage investments in its territory by investors of the other Contracting Party in accordance with its laws and regulations.

2. With respect to investments admitted, each Contracting Party shall accord full consent to such investments, licences, approvals, and permits, in accordance with the procedures and under the conditions laid down by its laws and regulations.

3. The Contracting Parties may consult as they deem appropriate to encourage and facilitate investments in their respective territories.

4. In accordance with its laws and regulations regarding entry, stay and work of natural persons in its territory, each Contracting Party shall examine in good faith and shall give due consideration, irrespective of the nationality or citizenship of the persons concerned, applications for the entry and temporary stay and work in its territory including orders sent by staff, managers and staff in respect of investments in its territory. family members of such personnel receive similar treatment orders with regard to the temporary entry and stay in the territory of the host contracting party.

5. Whenever goods or persons connected with an investment shall be transported, each Contracting Party shall permit, insofar as its laws and regulations applicable in the present case, the companies of the other contracting party to make such transport.

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

1. Investments of investors of each Contracting Party shall at all times fair and equitable treatment and shall enjoy, in the territory of the other Contracting Party, full protection and security in accordance with recognized principles of international

law and the provisions of this Agreement. No Contracting Party shall in any way hinder by arbitrary or discriminatory measures, the management, maintenance, expansion, use, sale or other disposition of investments.

2. Each Contracting Party shall publish all laws, regulations, judicial and administrative decisions, policies, procedures and guidelines relating to investments of investors of the other Contracting Party in its territory or directly affecting them

3. Each Contracting Party shall provide adequate means to assert the claims and shall exercise the rights related to investments. Each Contracting Party shall guarantee to investors of the other Contracting Party the right of access to the courts of justice and administrative tribunals and all agencies and other bodies empowered to litigation as well as the right to appoint individuals of their choice, which, in accordance with the applicable laws and regulations, have standing to assert the claims and shall exercise the rights related to their investments.

4. Neither of the Contracting Parties has the right to impose mandatory requirements, acquisition, expansion, use, administrative, management or exploitation of investments of investors of the other contracting party, in taking measures that may restrict or require the acquisition of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory; or any other measures to introduce discrimination having effect against investments of investors of the other Contracting Party in relation to investments made by its own investors or by investors of any third State.

In addition, investments shall not be subject in the territory of the host Contracting Party of performance requirements that may be harmful to their viability or adversely affect their use, management, maintenance, use, the expansion of their sale or any other form of transfer.

5. Investments of investors of either Contracting Party shall not be subject in the territory of the host contracting party, seizure, confiscation or other similar measures, except in the context of a legal procedure and in conformity with the relevant principles of international law and the relevant provisions of this Agreement.

## **Article 4. Treatment of Investments**

1. Each Contracting Party shall accord to investors of the other contracting party, as regards the use and management, maintenance, expansion and use, sale or other disposal of their investments in its territory, treatment which shall not be less favourable than that which it accords to its own in like circumstances investors to investors or of any third State, following the most favourable treatment to such investments.

2. However, the provisions of this article shall not be construed so as to oblige one contracting party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) A customs union, economic union, a free trade area, monetary union and any other form of regional economic arrangement or other similar international agreement to which one of the contracting parties is or may become a party;

(b) An agreement or other international, regional or bilateral agreement or other similar domestic legislation relating wholly or mainly to taxation.

## **Article 5. Compensation for Damages and Losses**

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or any other armed conflict, a national state of emergency, revolt, disturbances, riot, insurrection or other similar events that took place in the territory of the other Contracting Party, they will benefit on the part of this latter, as regards, restitution, indemnification, compensation or other indemnities, of a treatment which shall not be less favourable than that accorded by the latter Contracting Party to its own investors to investors or of any third State, whichever is the most favourable treatment.

2. Without prejudice to paragraph 1, investors of one Contracting Party who, in any of the situations referred to in paragraph, that have undergone, in the territory of the other Contracting Party, damage or loss due to:

(a) Requisition of their property or part thereof by the authorities or forces of the latter party;

(b) The destruction of their property or part thereof by the authorities or forces of the latter party unless it is the result of any action to combat or commissioned by the necessity of the situation,

shall receive prompt and adequate compensation for the effective loss or damage sustained during the period of the requisitioning or as a result of the destruction of their property.

## **Article 6. Expropriation**

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated, dispossessed or subjected to any direct or indirect measures having an effect equivalent to nationalisation, expropriation or dispossession (hereinafter referred to generally as "expropriation") by the other Contracting Party, except in the case of measures taken in the public interest for the internal purposes of that Contracting Party, subject to the prompt payment of effective and adequate compensation and provided that such measures are taken on a non-discriminatory basis and in accordance with a lawful procedure of general application.

(b) The amount of such compensation will correspond to the real value of the expropriated investment and will be determined and calculated in accordance with internationally accepted valuation principles, based on the fair market value of the expropriated investment immediately before the expropriation takes place or the intention to expropriate is made public, whichever occurs first (hereinafter referred to as the "valuation date"). The compensation will be calculated in freely convertible currency, at the option of the investor, on the basis of the exchange rate prevailing for that currency on the Valuation Date and will include interest at a commercial rate established on a market basis - which may not, however, be less than the prevailing LIBOR interest rate or an equivalent rate - from the date of expropriation until the date of payment.

(c) If the fair market value referred to above cannot be estimated, the amount of compensation will be determined on the basis of equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, capital gains, current income, net present value, book value and goodwill. Once the amount of compensation has been finally determined, it will be paid to the investor without delay.

2. On the basis of the principles set out in paragraph 1 and without prejudice to the rights of the investor under article 9 of this Agreement, the investor affected shall be entitled to seek review as soon as possible, by a judicial authority or other competent and independent authority of the Contracting Party making the expropriation, in the case of the investor, including the valuation of its investment and the payment of compensation.

3. For the sake of clarity, it is agreed that the term "expropriation" shall include situations of expropriation, by one of the Contracting Parties, the assets of a company or an enterprise or constituted established under the laws in force in its own territory in which an investor of the other Contracting Party has made an investment, including in the form of shares, stocks and other rights or forms of participation.

4. For the purposes of this Agreement, the term "expropriation" will also cover the interventions or regulatory measures by either of the Contracting Parties who have a de facto confiscatory or equivalent to expropriation, in the sense that these measures have the effect of removing effectively the investor of his ownership or control of the investment or substantial benefits therefrom, as well as the interventions or measures which may result in loss or damage to the economic value of the investment, such as the freezing or blocking of investment, the lifting of arbitrary or excessive taxes on investment, the compulsory sale of all or any part of the investment or other actions or similar measures.

5. In accordance with the principles and provisions of this Article, a claim for compensation may also be made where a measure taken by one of the Contracting Parties in respect of a company in which investors of the other Contracting Party have invested has had the effect of fundamentally affecting the investment.

## **Article 7. Transfers of Payments Related to Investments**

1. Each Contracting Party shall guarantee investors of the other Contracting Party the free transfer to or from its territory of payments relating to an investment, including transfer :

(a) The initial capital and any additional capital used to maintain or expand the investment;

(b) Income;

(c) Payments made under a contract including amortization of principal and accrued interest payments made pursuant to a loan agreement;

(d) Royalties and fees in relation to the rights referred to in Article 1 paragraph 1 (d);

(e) Proceeds from the sale or the total or partial liquidation of the investment;

(f) Other earnings and remuneration of personnel engaged from abroad in connection with an investment;

(g) The compensation paid pursuant to Articles 5 and 6;

(h) The payments referred to in Article 8;

(i) Payments arising out of the settlement of disputes.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. Transfers shall be made without delay, requested the investor affected shall be entitled to receive interest for the period of such delay.

3. The transfers shall be made at the spot rate applicable to the currency in which the transfer took place in the territory of the host Contracting Party on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments or the exchange rate determined in accordance with the rules of the International Monetary Fund or the exchange rate for conversion of currencies into special drawing rights or in United States dollars, whichever is the most favourable to the investor.

## **Article 8. Subrogation**

1. If one of the Contracting Parties or the body designated by it or any other party designated by that Contracting Party and incorporated or organized in the territory of that Contracting Party (the "indemnifying Party") makes a payment under a bond or guarantee given in respect of an investment in the territory of the other Contracting Party (the "host Party"), the host Party shall recognize :

(a) the transfer to the "indemnifying Party", by law or by a legal act, of all rights and claims arising out of such investment;

(b) the right of the "indemnifying Party" to exercise such rights, to assert such claims and to assume any obligations in connection with the investment by way of subrogation.

2. The "indemnifying Party" shall in all circumstances benefit of:

(a) treatment in respect of rights and claims acquired and obligations assumed by virtue of the transfer referred to in paragraph 1 above;

(b) all payments in respect of such rights and claims to which the investor was originally entitled under this Agreement in respect of the investment concerned.

## **Article 9. Settlement of Disputes between One of the Contracting Parties and an Investor**

1. Any dispute which may arise between one of the Contracting Parties and an investor of the other Contracting Party in connection with an investment made by that investor in the territory of the first Contracting Party shall, if possible, be settled amicably.

2. In the absence of a settlement within six months from the date on which either party to the dispute by amicable settlement delivering requested written notification to the other party, the dispute shall be submitted, at the choice of the investor Party to the dispute, to:

(a) In any proceeding agreed and applicable dispute settlement;

(b) International arbitration in accordance with the provisions of the following paragraphs of this Article.

3. In the event that an investor chooses to submit the dispute to international arbitration, it also gives its consent in writing for the dispute to be submitted to one of the following bodies:

(a) The International Centre for the Settlement of Investment Disputes (the Centre), established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Washington Convention ");

(b) An arbitral tribunal established under the Arbitration Rules ("the Rules") of the United Nations Commission on International Trade Law (UNCITRAL), provided that such rules may be modified by the parties to the dispute (the appointing authority under Article 7 of the rules shall be the Secretary-General of the Centre);

(c) An arbitral tribunal established under the arbitration rules of arbitral institution any mutually agreed by the parties to the dispute.

4. Notwithstanding the fact that the investor may have submitted a dispute to binding arbitration under paragraph 3, it is authorized prior to the institution of the arbitral proceeding or during the proceeding, to apply to the courts or administrative tribunals of the Contracting Party which is a party to the dispute an interim injunction for the preservation of

its rights and interests, provided that it does not require the payment of damages.

5. Each Contracting Party consents unconditionally provided that any dispute concerning an investment may be submitted to binding arbitration proceedings in accordance with the choice of the investor under paragraph 3 (a) and (b) or mutually agreed by the parties to the dispute under paragraph 3 (c).

6. (a) The consent given under paragraph 5, in conjunction with the consent given under paragraph 3, shall satisfy the requirement of written agreement, imposed on the parties to a dispute, for the application of the following provisions: Chapter II of the Washington Convention, the Additional Facility Rules, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (the "New York Convention") and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this article, mutually agreed by the parties to the dispute, be held in a State that is a party to the New York Convention. Claims submitted to arbitration under this section shall be considered to arise from a commercial relationship or transaction for purposes of article 1 of the New York Convention.

(c) Neither of the Contracting Parties shall give diplomatic protection or is to make an international claim, in respect of any dispute referred to arbitration unless the other contracting party has failed to abide by or comply with the award rendered in respect of the dispute. However, in respect of the application of this paragraph, diplomatic protection shall not include informal diplomatic exchanges aimed solely to facilitate the resolution of the dispute.

7. The arbitral tribunal established under this article shall decide on the subject matter of the dispute in accordance with rules of law such mutually agreed upon by the parties to the dispute. In the absence of such an agreement, the tribunal shall apply the law of the Contracting Party to the dispute party including its rules on the Conflict of Laws, as well as the principles of international law, while taking into account the relevant provisions of this Agreement.

8. For the purpose of article 25 (2) (b) of the Washington Convention, an investor who is not a natural person who has the nationality of a Contracting Party to the dispute on the date of the consent in writing referred to in paragraph (6), and which before a dispute arises between it and that Contracting Party, was controlled by investors of the other Contracting Party, shall be treated as a "national of another Contracting Party" and for the purpose of article 1 (6) of the Additional Facility Rules, as a "national of another State".

9. The Arbitral Awards, which may include an award of interest shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out such awards without delay and shall ensure that they are effectively applied within its territory.

10. Within the framework of any type of procedure, whether judicial or arbitral or other enforcement of any decision or award issued in respect of a dispute concerning an investment between a Contracting Party and an investor of the other contracting party, any of the Contracting Parties may invoke, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive from any third party, whether public or private, including the other contracting party and to its public authorities, bodies and organizations, pursuant to an insurance contract, indemnification or other compensation for all or part of the alleged damage.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall, if possible settle any dispute concerning the interpretation or application of this Agreement or other consultations through diplomatic channels.

2. If the dispute has not been settled within six months from the date on which such consultations or the use of diplomatic channels were requested by either Contracting Party and unless the contrary to written agreement between the contracting parties, either Contracting Party may by written notice to the other Contracting Party submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member of the Tribunal and these two Members shall designate by common accord a national of a third State who will serve as the Chairman of the Tribunal to be appointed by the two contracting parties. The members of the Tribunal shall be appointed within two months and the Chairman within four months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other agreement, 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 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. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he too is prevented from exercising this function, the highest the member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. the decisions of the Tribunal shall be taken in accordance with the provisions of this Agreement and the Principles of International Law and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by it, as well as the costs for its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs of the arbitration proceedings shall be borne in equal parts by both contracting parties. The arbitral tribunal may however, at its discretion, stipulate that all or a higher proportion of such costs shall be borne by one of the two Contracting Parties. The arbitral tribunal shall determine its own rules of procedure.

## **Article 11. Relationship between the Contracting Parties**

The provisions of this Agreement shall apply, whether or not the contracting parties maintain diplomatic or consular relations.

## **Article 12. Application of other Rules**

If the legislation of either Contracting Party or obligations under international law existing at present or in the future by the Contracting Parties in addition to this Agreement contain rules whether general or particular, by virtue of which the investments of investors of the other Contracting Party to more favourable treatment than that accorded by this Agreement, such rules shall to the extent that they are more favourable to the investor, shall prevail over this Agreement.

## **Article 13. Scope of the Agreement**

This Agreement shall apply to all existing investments or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party.

## **Article 14. Entry Into Force**

Each Contracting Party shall notify in writing to the other Contracting Party that the constitutional requirements for the entry into force of this Agreement have been completed and the Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for a period of thirty (30) years and shall be extended for one or several equivalent periods unless at least one year before the expiry of the initial period of validity or any subsequent period, either Contracting Party notifies in writing the other Contracting Party of its intention to denounce this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this agreement will be effective, the provisions of this Agreement shall continue to apply for a period of twenty (20) years from the date of termination of this Agreement.

In WITNESS WHEREOF, the respective plenipotentiaries of both contracting parties have signed this Agreement.

Done at Brussels, 28 September 2000, corresponding to 30 jamada II 1421H in two originals, French, Dutch, English and Arabic languages, all texts being equally authentic. the English text will prevail in case of divergence of interpretation.

For the belgo-luxembourg Economic Union:

For the Government of the Kingdom of Belgium, acting in the name and on behalf of the Government of the Grand Duchy of Luxembourg:

For the State of Kuwait:

For the Walloon Government:

For the Flemish Government:

For the Government of the Brussels-Capital Region: