

# **AGREEMENT BETWEEN THE GOVERNMENTS OF THE KINGDOM OF BELGIUM AND THE GRAND DUCHY OF LUXEMBOURG, AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS, CONCERNING THE MUTUAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg, on the one hand,

And

The Government of the Union of Socialist republics sovietiques, of the other part,

Desirous

To create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

Whereas

The positive impact that this Agreement may exercise with a view to improving the business contacts and to enhance confidence in the field of investment,

Have agreed as follows:

## **Article 1.**

1. In the present Agreement:

1.1. The term "Investor" means:

1.1.1. Any natural person who, under Luxembourg, Belgian or Soviet legislation is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Union of Soviet Socialist Republics respectively and which may, in accordance with its domestic law of the country, make investments in the territory of the other contracting party.

1.1.2. Any legal person constituted under Luxembourg, Belgian or Soviet law having its head office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Union of Soviet Socialist Republics respectively and which may, in accordance with its domestic law of the country, make investments in the territory of the other contracting party.

1.2. The term "investments" means all assets which investors of a contracting party invest in the territory of the other Contracting Party in accordance with its law and in particular:

1.2.1. Property (buildings, facilities, equipment and other physical assets);

1.2.2. Financial assets, as well as shares and other forms of participation; and claims relating thereto.

1.2.3. Rights to any performance having an economic value;

1.2.4. Intellectual property rights such as patents, trademarks and designations of origin, trade names, designs, copyrights and processes and technical know-how.

The term "investment" includes indirect investment made by investors of one Contracting Party in the territory of the other Contracting Party, through an investor of a third State.

Any modification of the legal form of investment or reinvestment shall not affect their classification as "investments" within

the meaning of this Agreement.

1.3. The term "returns" shall mean amounts received or to receive and resulting from investments, including the interests, profits, dividends, royalties and licensing, commissions from copyrights and remuneration for technical assistance or services.

2. This Agreement shall apply to the territory of each of the Contracting Parties, as well as the economic zone and the continental shelf extending beyond the territorial waters of each of the Contracting Parties concerned over 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.**

Each Contracting Party shall guarantee that the most-favoured-nation clause shall apply to investors of the other contracting party in all matters covered by this Agreement, and particularly in articles 4, 5 and 6, with the exception of privileges which either Contracting Party accords to investors of a third State based on:

- Its participation in a union douanière economic or other international organizations;
- An agreement with a view to eliminating double taxation or other tax arrangements.

## **Article 3.**

Each of the Contracting Parties encourages investments by investors of the other Contracting Party and admits such investments to its territory in accordance with its legislation.

## **Article 4.**

1. Each Contracting Party undertakes to provide in its territory for investments by investors of the other contracting party fair and equitable treatment excluding any unjustified or discriminatory measure which could adversely affect their enjoyment, maintenance, management or disposal.

2. Subject to the measures necessary for the maintenance of public order, shall enjoy such investments a constant protection and security.

## **Article 5.**

Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized, subject to any other measures having similar effects, unless such measures are taken in the public interest and under due process and are not discriminatory.

They shall be accompanied by provisions for the payment of compensation in the amount shall correspond to the real value of the affected investments immediately before the date on which the measures taken or are publicly available. The compensation shall be paid without delay to investors in convertible currency and be freely transferable.

## **Article 6.**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of funds in convertible currency related to their financial investments, namely:

- 1.1. The initial capital and additional amounts to maintain or increase the investment;
- 1.2. Income derived from the investment;
- 1.3. Of monies in repayment of loans related to investments;
- 1.4. The amounts owed to the investor as a result of the sale or the total or partial liquidation of the investment;
- 1.5. The compensation pursuant to article 5.

2. The transfers referred to in paragraph 1. shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the State in whose territory the investment has been made.

3. Each Contracting Party shall take the necessary steps to that after completion of the formalities prescribed by its laws, transfers are provided without undue delay and without any fees or other charges that the usual costs relating thereto.

## **Article 7.**

1. If under a legal or contractual guarantee covering non-commercial investment risks, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the Rights of the investor indemnified, within the limits of the proportion of risk actually covered by the Guarantee and paid to the investor.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated; in such cases, the rights of the insurer shall not exceed those of the investor.

## **Article 8.**

1. This Agreement shall not prevent investors to rely more favourable provisions contained in the legislation applicable in the territory of the Contracting Party where the investment has been made or in the international agreements to which the contracting parties have signed or purchase.

2. Investors of one Contracting Party may conclude with investors of the other contracting party specific agreements which cannot be contrary to this Agreement and the legislation of the Contracting Party in whose territory the investment is made.

## **Article 9.**

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If the dispute cannot be resolved as provided under paragraph 1. it shall be subject to review by a joint commission composed of representatives of the contracting parties; it shall meet within the shortest possible time at the request of one of the Contracting Parties.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

4. For each case, the arbitral tribunal shall be constituted in the following manner:

Each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three 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 arbitration tribunal.

5. If the periods specified in paragraph 4 above have not been made, either Contracting Party may apply to the Secretary-General of the United Nations to proceed with the necessary appointments.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of International Law recognized.

7. The arbitral tribunal shall determine its own rules of procedure.

8. The arbitral tribunal shall reach its decisions by a majority of the votes; they shall be final and binding on the contracting parties.

9. Each Contracting Party shall bear the costs of SEN arbitrator and of its representation in the arbitration proceedings. The cost of the Chair of the Arbitration Tribunal and other costs shall be borne in equal parts by the contracting parties.

## **Article 10.**

1. Any dispute between one Contracting Party and an investor of the other contracting party concerning the amount or to the method of payment of compensation owed pursuant to Article 5 shall be accompanied by written notification a detailed memorandum addressed by the investor and the Contracting Party concerned. To the extent possible, the parties to the dispute seek to settle the dispute in a manner as mutually agreed.

2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted, at the choice of the investor:

2.1. The Arbitration Institute of the Stockholm Chamber of Commerce;

2.2. An ad hoc arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitration shall be based on:

3.1. The provisions of this Agreement;

3.2. The national law of the Contracting Party in whose territory the investment is located, including its rules on the Conflict of Laws;

3.3. The recognized rules and principles of International Law.

4. 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 11.**

Each Contracting Party may propose to the other contracting party consult each other on all matters related to the implementation or interpretation of this Agreement.

Each Contracting Party shall take the necessary steps to make this possible consultation.

## **Article 12.**

This Agreement shall apply to investments made in the territory of one of the Contracting Parties with investors of the other contracting party, as from 1 January 1964.

## **Article 13.**

1. This Agreement shall enter into force thirty days after the date on which the contracting parties have notified each other that the procedures necessary for this purpose in their respective countries have been complied with. This Agreement shall remain in force for a period of fifteen years. Unless one of the Contracting Parties denounces it in writing at least twelve months prior to the expiry of the period of validity, it shall be automatically renewed until either contracting party notifies in writing to the other contracting party of its intention to terminate this Agreement.

Such notification takes effect twelve months from the date of receipt by the other contracting party.

2. Investments made prior to the termination of this Agreement shall continue to apply for a period of fifteen years from the date of its termination.

In WITNESS WHEREOF the undersigned, duly authorized representatives, thereto, have signed the present Agreement.

Done at Moscow on 9 February 1989.

Each in three originals in the English and French languages, all texts being equally authentic.

For the Government of the Grand Duchy of Luxembourg:

Hubert WURTH

For the Government of the Kingdom of Belgium:

Willy CLAES

Robert URBAIN

For the Government of the Union of Soviet Socialist Republics:

Boris TOLSTYKH

Vladimir PANSKOV

## **Protocol to the Agreement between the Governments of the Grand Duchy of Luxembourg and the Kingdom of Belgium, and the Government of the Union of Soviet Socialist Republics, concerning the reciprocal encouragement and protection of investments**

Upon signing the Agreement between the Governments of the Grand Duchy of Luxembourg and the Kingdom of Belgium, and the Government of the Union of Soviet Socialist Republics, concerning the reciprocal encouragement and protection of investments, the undersigned principals have further agreed to give the following interpretation to Article 2 of the above-mentioned Agreement

The Union of Soviet Socialist Republics shall grant on its territory to investors of the Grand Duchy of Luxembourg and the Kingdom of Belgium treatment at least equal to that which it grants to investors of the countries which are members of the Organization for Economic Cooperation and Development at the date of this Protocol.

This Protocol is an integral part of the above-mentioned Agreement.

DONE at Moscow, this 9th day of February 1989.

In three originals, each in the French and Russian languages, each text being equally authentic.

For the Government of the Grand Duchy of Luxembourg:

Hubert WURTH

For the Government of the Kingdom of Belgium:

Willy CLAES

Robert URBAIN

For the Government of the Union of Soviet Socialist Republics

Boris TOLSTYKH

Vladimir PANSKOV