

# **AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION, on the one hand, and THE DEMOCRATIC REPUBLIC OF CONGO, on the other, 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 Democratic Republic of the Congo, of the other part,

(hereinafter referred to as the contracting parties)

Desiring to strengthen economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

Convinced that a stable investment framework will maximize the effective use of economic resources and improving the standard of living;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. the term "investors" means:

a) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Democratic Republic of the Congo is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Democratic Republic of the Congo respectively and making investments in the territory of a Contracting Party;

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 Democratic Republic of the Congo and having its seat and performing real business activity in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Democratic Republic of the Congo respectively and making investments in the territory of a Contracting Party.

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 from an investment amounts and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties or fees.

4. The term "territory" shall apply:

a) In the territory of the Kingdom of Belgium and the territory of the Grand Duchy of Luxembourg as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the State 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;

b) In the territory of the Democratic Republic of the Congo, as well as the parties maintained adjacent outside territorial sea, including the sea bed or - under soil of the Democratic Republic of the Congo on which the Democratic Republic of the Congo exercises in accordance with international law, sovereign rights and jurisdiction.

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 contaminants 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 labor 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) A 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 and Admission**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other contracting party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to notify the other Contracting Party, at the request of either Contracting Party on the investment opportunities in its territory.

3. 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.

4. The entry, stay and work used in respect of investments in the territory of one Contracting Party, as well as the entry, stay and work of family members of such personnel, shall be subject to the laws and regulations of that Contracting Party.

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

1. All 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 a 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 Clause**

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. Neither Contracting Party in its territory shall accord to investors of the other contracting party as regards the acquisition, expansion, management, operation, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that accorded to its own investors or to investors of a third country.
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 organization.
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 in relation to the 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 other Party shall accept that representatives of their Governments shall meet for consultations on any matter falling within the scope of this article.

#### **Article 6. Labour**

1. Recognising that each Contracting Party has the right to determine its own labour standards of protection and to adopt or modify laws accordingly its ad hoc, each Contracting Party shall endeavour to ensure that its legislation provides labour standards consistent with the internationally recognized labor rights set forth in paragraph 6 of article 1 and will continue to improve those 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 Labour Organization (ILO) and 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 labor 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. Expropriation and Compensation for Damage and Losses**

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, 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 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 a 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 not less than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

## **Article 8. Transfers**

1. Each Contracting Party shall accord to investors of the other Contracting Party, the free transfer inside or outside its territory, 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 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 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 that the usual bank charges.

## **Article 9. Subrogation**

1. If one Contracting Party or agency, whether national or international, 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 investors indemnified the obligations under a legal or contractual relationship with them.

## **Article 10. Application of other Obligations**

1. If the provisions of law of either Contracting Party or international obligations existing or future, a decision shall contain specific or general, entitling investments of the other Contracting Party to a more favourable treatment than that provided for by the present Agreement, such decision shall prevail over this Agreement.

2. Each Contracting Party undertakes to comply with any requirement prior to an investor of the other Contracting Party in connection with investments already approved in its territory.

## **Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

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, 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 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:

- to 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.

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. Neither of the Contracting Party, Party to the dispute raise objection shall not, 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 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 12. 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 within six months, 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 within six months, it shall be submitted, at the request of either of the contracting parties 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. The Tribunal may however in its award determine another distribution of costs.

### **Article 13. Previous Investments**

This Agreement shall apply to investments made before or after its entry into force, but shall not apply to any investment dispute was settled before its entry into force.

### **Article 14. 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 one year before 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 at least one year 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.

Done at Kinshasa, on 17 February 2005 in two originals, each in French and Dutch all texts being equally authentic. the French text shall 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 Walloon Government:

For the Flemish Government:

For the Government of the Brussels-Capital Region:

Karel DE GUCHT,

Minister for Foreign Affairs

FOR THE DEMOCRATIC REPUBLIC OF THE CONGO :

Alexis THAMBWE MWAMBA,

Minister of Planning