Agreement between the Belgo-Luxembourg Economic Union and the Arab Republic of Egypt concerning the Encouragement and Reciprocal Protection of Investments

THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

Acting both in its own name and in the name of

The Government of the Grand-Duchy of Luxembourg, by virtue of existing agreements,

The Walloon Government,

The Flemish Government,

And the Government of the Region of Brussels-Capital,

On the one hand,

And

THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT, on the other hand,

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

DESIRING to reinforce economic co-operation between both Parties and to intensify co-operation between private entreprises,

INTENDING to create favourable conditions for reciprocal private investments in the territory of either Contracting Party,

RECOGNIZING that reciprocal protection of such investments would stimulate the economic initiatives and increase the economic prosperity of both Contracting Parties,

HAVE agreed as follows:

Article 1. Definitions

For the purpose of this agreement :

1) The term investments means any kind of assets and any direct or indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity in the territory of one Contracting party in accordance with its laws and regulations by an investor of the other Contracting Party and includes in particular, though not exclusively :

a) Movable and immovable property as well as any other right such as mortagages, pledges, usufruct and similar rights;

b) Shares and other kinds of interest in companies or enterprises;

c) Bonds, claims to money and rights to any performance having economic value;

d) Copyrights, marks, patents, technical processes, trade-names, trade-marks and goodwill;

e) Concessions, granted under public law, or under contract including concessions to search for, extract or exploit natural ressources.

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement.

2) The term "investors" means with regard to each Contracting Party :

a) Any natural person having the nationality of the Kingdom of Belgium, of the Grand Duchy of Luxembourg or of the Arab Republic of Egypt in accordance with its legislations;

b) Any legal entity, including corporations, companies, firms, enterprises or associations constituted in the territory of one of the Contracting States in accordance with its legislation;

3) The term "returns" means :

The amounts yielded by an investment for a definite period in particular though not exclusively : profits, dividends, royalties and interests.

4) The term "territory" shall apply to the territory of the Kingdom of Belgium, to the territory of the Grand-Duchy of Luxembourg and to the territory of the Arab Republic of Egypt as well as to the maritime areas i.e. the marine and underwater areas which extend beyond the territorial waters of the States concerned and upon which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural ressources.

Article 2. Promotion of Investments

1) Each Contracting Party shall promote investment on its territory by investors of the other Contracting Party and shall accept and encourage all investment in accordance with its legislation.

2) In particular, each Contracting Party shall authorize the conclusion and execution of licensing contracts and of contracts relating to commercial, administrative or technical assistance, as far as these activities are in connection with investments as mentioned in Paragraph 1.

Article 3. Treatment of Investment

1) All investments belonging directly or indirectly to investors of one of the Contracting Parties shall enjoy fair and equitable treatment in the territory of the other Contracting State(s).

2) Such investment shall also enjoy continuous protection and security, excluding any unjustified or discriminatory measure which could hinder their management, maintenance, utilization, enjoyment or liquidation.

3) The treatment and protection guaranteed by paragraphs 1 and 2 of this Article shall at least be equal to that enjoyed by investors of any third State and will in no case be less favourable than that recognized under international law.

4) Nevertheless, the treatment and protection referred to in the preceding paragraphs, shall not be extended to privileges which either Contracting Party accords to the investors of a third State because of its participation in, or association with a free trade zone, customs union, a common market or any other form of regional economic organization.

Article 4. Deprivation and Limitation of Ownership

Investment made by investors of one Contracting Party in the territory of the other Contracting Party cannot be expropriated, nationalized or subjected to other measures having a similar effect (hereinafter referred to as "expropriation") except when the expropriation is done for public interest, under due process of law, without any discrimination and against prompt, adequate and effective compensation.

Such compensation shall amount to the value of the investment the day before the date of expropriation or the day before the impending expropriation became public knowledge, whichever is the earlier. The compensation shall be paid without delay and shall be calculated in a freely convertible currency and include interest rate at LIBOR from the date of expropriation until the date of payment. Such compensation shall be effectively realizable.

Article 5. Transfers

1) Subject to compliance with the current treaties on regional economic integration each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments relating to an investment, including more particularlyxd ;

a) Amounts necessary for establishing, maintaining or expanding the investment;

b) Amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licenses, concessions and other similar rights, as well as salarie of expatriate personnel;

c) Returns;

d) Proceeds from the total or partial liquidation of investments including capital gains or increases in the invested capital;

e) Compensation paid pursuant to Article 4.Article 4.

2) The nationals of the Contracting States who have been authorized to work in the territory of the other Contracting State(s) in connection with an investment shall also be allowed to make transfer of any portion of their earnings to their country of origin.

3) In the absence of an agreement on this matter, transfers shall be made in a freely convertible currency at the rate applicable on the day the transfers are made to cash transactions in the currency used.

4) Each Contracting Party shall issue the authorizations required to ensure that the transfers can be made without undue delay, with no other expenses than the usual taxes and costs.

5) The guarantees referred to in this Article shall not be less than those granted to the investors of the most favoured nation.

Article 6. Subrogation

In the event that one of the contracting Parties or any public institution of this Party, as a result of a financial guarantee given by it for an investment effected in the territory of the other Contracting Party, makes payment to its investors, this Party is entitled by virtue of subrogation, to exercise the rights and actions of the investors.

The subrogation shall also apply to the right of transfer referred to in Article 5.

Article 7. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to revolts, riots, armed conflicts or revolutions shall enjoy, on the part of the latter a treatment no less favourable than the treatment that Party accords to its own investors or to those of a third State, as regards restitution, indemnification, compensation or other considerations.

Article 8. Disputes between a Contracting Party and an Investor

1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other contracting State(s) shall, whenever possible, be settled amicably.

2) As far as possible, the Parties shall endeavor to settle the dispute through negotiations, if necessary by seeking expert advice from a third party, or by conciliation between the Contracting Parties through diplomatic channels.

3) If such a dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the investor shall be entitled to submit the case either to :

a) International arbitration of the International Center for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965 (ICSID Convention), or

b) An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or

c) The Cairo Regional Center for International Commercial Arbitration, or

d) Arbitration Rules of the International Chamber of Commerce (ICC)) in Paris.

4) The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

Article 9. Consultations

The Contracting Parties shall, whenever needed, hold consultations in order to review the interpretation or application of this Agreement. These consultations shall be held at the request of either of the Contracting Parties.

Article 10. Disputes between the Contracting Parties Relating to the Interpretation or Application of this Agreement

1) Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2) In the absence of a settlement through diplomatic channels, the dispute shall be submitted to a joint commission consisting of representatives of the two Parties. This commission shall convene without undue delay at the request of the first Party to take action.

3) If the joint commission cannot settle the dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows for each individual case :

Each Contracting Party shall appoint one arbitrator within a period of two months from the date on which either Contracting Party has informed the other Party of its intention to submit the dispute to arbitration. Within a period of two months following their appointment, these two arbitrators shall appoint by mutual agreement a national of a third State as chairman of the arbitration court.

If these time limits have not been complied with, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointment(s).

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which one of the Contracting Parties has no diplomatic relations or if, for any other reason, he cannot exercise this function, the Vice-President of the International Court of Justice shall be requested to make the appointment(s).

4) The Court thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of votes; they shall be final and binding on the Contracting Parties.

5) Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

Article 11. Most Favoured Nation

In all matters relating to the treatment of investments the investors of each Contracting Party shall enjoy most-favoured-nation treatment in the territory / territories of the other Party.

Article 12. Application of the Agreement

This Agreement shall apply to all investments made by investors of a Contracting Party in the territory / territories of the other Contracting State(s) prior to or after the entry of this agreement into force in accordance with the laws and regulations of either Contracting State. It shall, however, not be applicable to disputes which have arisen 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 of exchange of the last notification of the fulfillment of the legal procedures. The Agreement shall remain in force for a period of ten years.

Unless notice of termination is given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of ten years with the understanding that each Contracting Party reserves the right to terminate the Agreement by notification given at least six months before the date of expiry of the current period of validity.

2) Upon entry into force of this Agreement, the Agreement between the Belgo-Luxembourg Economic Union and the Arab Republic of Egypt signed in Cairo on February 28th, 1977 shall be replaced by this Agreement.

3) Investments made prior to the date of termination of this agreement shall be covered by this Agreement for a period of ten years from the date of termination.

In witness whereof, the undersigned representatives, duly authorized by their respective Governments, have signed the present Agreement

Done at Cairo on 28 February 1999, in two original copies, each in French, Dutch, English and Arabic languages, all texts being equally authentic. In case of divergence of interpretation the text in English shall prevail.