

AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE REPUBLIC OF YEMEN CONCERNING THE RECIPROCAL ENCOURAGEMENT AND 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 the 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 REPUBLIC OF YEMEN, on the other hand,

(hereinafter referred to as "the Contracting Parties")

Desiring to strengthen their economic cooperation by creating favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party and acknowledging that offering encouragement and mutual protection to investments based on the investment laws and regulations in effect in each Contracting Party and on this agreement will contribute to stimulating investment ventures, which foster the prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purpose of this agreement:

1. The term "investment" shall mean any kind of property or asset directly or indirectly invested or reinvested by an investor or investors of either Contracting Party in the territory of the other Contracting Party in conformity with the laws and regulations of that Party.

Without limiting the scope of the foregoing, the term "investment" comprises in particular, but not exclusively :

- a) Movable and immovable property as well as rights related thereto to the extent that they can be invested;
- b) Shares, debentures, equity holdings or any other debt instruments as well as public securities in general related to an investment;
- c) Debts and interests accrued having an economic value connected with an investment as well as reinvested incomes and capital gains;
- d) Copyright, trade marks, patents, industrial designs and other intellectual or industrial property rights, know-how and trade secrets, trade names and goodwill which are connected with an investment;
- e) Any economic rights accorded by the law or arising from a contract and any license and franchise granted in accordance with the provisions in force and applicable to economic activities;

f) Any increase in value of the original investment.

2. The term "investor" shall mean any natural or legal person constituted under the law of a Contracting Party and investing in the territory of the other Contracting Party.

3. The term "returns" shall mean the proceeds of an investment as a result of an activity in the territory of the Contracting Party involved, including in particular profits, interests, capital gains, dividends, royalties or payments.

4.

(a) The term "territory" shall mean, for the Republic of Yemen, territory which comes under its sovereignty including, in addition to the zones contained within its land boundaries, islands, territorial sea, exclusive economic zone and also the continental shelf and other maritime areas over which it has sovereignty and jurisdiction according to the international law.

(b) The term "territory" shall apply, for the Belgo-Luxembourg Economic Union, to the territory of the Kingdom of Belgium and to the territory of the Grand-duchy of Luxembourg as well as the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters, of the states concerned upon which the latter exercise in accordance with international law, their sovereign rights and their jurisdictions for the purpose of exploring, exploiting and preserving natural resources.

Article 2. Promotion and Protection Of investment

1. Each Contracting Party shall encourage the investors of the other Contracting Parties to invest in its territory.

2. Each Contracting Party shall at all times ensure just and fair treatment of direct or indirect investments by investors of the other Contracting Party and shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of direct or indirect investment made in its territory by the investors of the other Contracting Party, as well as companies, enterprises in which these investments have been made, shall in no way be subject to unjustified or discriminatory measures.

3. Each Contracting Party shall maintain in its territory a legal framework to guarantee to investors the continuity of legal treatment, including the compliance in good faith, of all undertakings occurred with regard to each specific investor in accordance with its laws.

4. Changes in the legal form of an investment shall not affect its designation as "investment" for the purpose of this agreement.

Article 3. National Treatment, Most Favoured Nation Clause

1. A Contracting Party within its own territory shall offer the investors and investments of the other Contracting Party full legal protection and fair treatment no less favourable than what is accorded to its own investors or than what is granted to investors of a third State.

2. The provisions in paragraph (1) of this Article do not refer to the advantages and privileges which a Contracting Party may guarantee to investors of a third State by virtue of its membership of a Customs or Economic union, common market, free trade zone, or any other form of regional economic organization or under agreements signed to prevent the double taxation.

Article 4. Nationalization or Expropriation

1. Investments shall not be "de jure" or "de facto", directly or indirectly, nationalized, expropriated, requisitioned or subjected to any measures having totally or partly an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest, against immediate and just compensation and provided that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures, including specific commitments.

2. Fair compensation shall be established on the basis of real market value prevalent prior to the time upon which the decision to nationalize or expropriate is taken or made public.

3. Compensation shall be deemed as immediate if it takes place without undue delay.

4. In case of an undue delay, there will be a re-evaluation at the request of the investor, in order to compensate for this situation.

5. An investor of either Party that asserts that all or part of his investment has been expropriated shall have the right for a prompt hearing by the competent court or administrative authority of the Party where the investment was established, in order to determine whether any such expropriation has occurred, and if so, whether such expropriation, and any compensation therefor conforming to the law and regulation and to the fundamentals of this Agreement, and to decide all other matters relating thereto.

6. In the absence of an agreement between the investor and the competent authority, the amount of compensation shall be established in accordance with the procedures for dispute settlement pursuant to Article 8 of this Agreement. Compensation shall be freely transferable pursuant to Article 6 of this Agreement.

7. The provisions of Paragraph 1 of this Article shall also apply to investment profits. Paragraph 1 of this Article shall also apply to investment profits.

Article 5. Compensation for Damage or loss

Should investors of a Contracting Party incur losses or damages on their investments in the territory of the other Contracting Party due to war, other form of armed conflict, state of emergency, civil strife, riot or other similar incidents, the Contracting Party where investments have been established shall offer the investors compensation in respect of such losses or damages not less favourable than what is offered to its own nationals or to the investors of the most favoured nation.

Article 6. Transfer of Capital - Profits and Returns

1. Each Contracting Party shall allow the investors of the other Contracting Party to transfer abroad all payments, without undue delay, in any convertible currency.

These payments include more particularly

- a) Invested capital, including reinvested returns used to maintain and increase the investment;
- b) Net income, dividends, royalties, payments for assistance and technical services, interests and other profits gained by the investment;
- c) Earnings derived from the total or the partial sale or the total or the partial liquidation of an investment;
- d) Amounts necessary for payments under a contract, including funds to repay loans connected to an investment and the payment of related interests;
- e) Compensation pursuant to Articles (4) and (5) as well as payments arising out of a dispute related to an investment;
- f) Remuneration and allowances paid to the nationals of the other Contracting Party for work and services rendered in connection to an investment.

2. Without limiting the scope of Article 3 (2) of this Agreement, the guarantees referred to in Article six shall at least be equal to those granted to the investors of the most favoured nation.

3. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin.

4. Transfers shall be made in a freely convertible currency at the rate applicable on the day transfers are made to cash transactions in the currency used.

5. 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.

Article 7. Subrogation

1. In the event that a Contracting Party or an institution thereof has provided a guarantee with respect to non-commercial risks for an investment established by one of its investors in the territory of the other Contracting Party, and has made payment to the said investor on the basis of that guarantee, the said Contracting Party or its institution which provided the guarantee shall have the right to subrogate the investor in all the rights given to him.

2. Such guarantor shall not be entitled to exercise any rights other than those which the investors should have been entitled

to exercise.

3. Dispute between the host country and such guarantor shall be settled in accordance with the provisions of Article (8) of this Agreement.

Article 8. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between a Contracting Party and the investor of the other Contracting Party on investment, including disputes relating to the amount of compensation, shall be settled amicably as far as possible.

2. If the investor and a legally competent entity of the other Contracting Party have made an investment agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event such dispute cannot be settled amicably within six months from the date of written request for settlement, the investor in question may submit at his own discretion, the dispute for settlement to :

a) The host Contracting Party' competent court having territorial jurisdiction; or

b) An ad hoc arbitration tribunal set up, in compliance with the arbitration rules of the host Contracting Party; or

c) An ad hoc arbitration tribunal, in compliance with the arbitration regulation of the UN Commission of International Trade Law (UNCITRAL); arbitration regulation of the UN Commission of International Trade Law (UNCITRAL);

Or

d) The International Centre for Settlement of Investment Disputes (I.C.S.I.D.) applying the arbitration rules or procedures under the Washington convention of 18 March 1965 on the settlement of the investment disputes between States and nationals of other States.convention of 18 March 1965 on the settlement of the investment disputes between States and nationals of other States.

4. To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such consent implies that both parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

5. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 7 of this agreement.Article 7 of this agreement.

Article 9. Settlement of Disputes between Contracting parties

1. Any dispute which may arise between the Contracting Parties relating to interpretation and application of this Agreement shall, as far as possible be settled amicably through negotiations.

2. In the event that the dispute cannot be settled within six months from the date upon which a Contracting Party has dispatched to the other Contracting Party a written request for negotiation, the dispute shall, at the request of either Contracting Party, be submitted to an ad hoc arbitration tribunal as provided for in this article.

3. The arbitration tribunal shall be constituted of three arbitrators. Each of the Contracting Parties shall appoint one arbitrator within two months from the date upon which the request for arbitration is served. The two arbitrators shall, within two months, appoint the third arbitrator who shall act as the president of the tribunal.

4. If, within the period specified in Paragraph (3) of this Article, the appointments have not been made, either Contracting Party may, in default of an other arrangement, request the President of the International Court of Justice to make the appointments. In the event that the President of the Court is a national of one of the Contracting Parties or if it is, for any reason, impossible for him to make the appointments, the task shall be then assumed by the Vice-President. If the Vice-President of the Court is a national of either Contracting Party, or if he is unable to make the appointments, the most senior member of the International Court of Justice who is not a national of one of the Contracting Parties shall be invited to make the appointments.

5. The arbitration tribunal shall render its award by a majority of votes, and the award shall be binding. Each contracting party shall pay the fees and expenses of its own arbitrator and any charges incurred in connection to its representation at the proceedings. The President's fees and any other charges shall be equally borne by the Contracting Parties.

6. The arbitration tribunal shall lay down its own procedures.

Article 10. Relations between Governments

The provisions of this Agreement shall be applied whether or not the Contracting Parties have diplomatic or consular relations.

Article 11. Application Of other Provisions

1. If a matter is governed both by this Agreement and another international agreement to which both Contracting Parties are signatories, the most favourable provisions shall be applicable to the Contracting Parties and to their investors.
2. Should the treatment offered by a Contracting Party to the investors of the other Contracting Party, in accordance with its laws and regulations or any other provisions of a specific contract, an investment authorization or an agreement, be more favourable than that provided under this Agreement, the most favourable treatment shall be applicable to that specific case.

Article 12. Previous investments

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations, but it shall not apply to conflicts arisen before its entry into force.

Article 13. Entry Into Force

This Agreement shall become effective as of the date upon which the two Contracting Parties notify each other that their respective constitutional procedures have been completed.

Article 14. Duration and Expiry

1. This Agreement shall remain effective for a period of ten years from the date of the notification provided for under Article 13 above and shall be automatically renewed for further similar periods of ten years thereafter, unless a Contracting Party notifies its withdrawal in writing not later than a year before its expiry date.
2. In the case of an investment established prior to the expiry date of this Agreement, as provided for under Paragraph (1) of this Article, the provisions of Articles 1 to 13 of this agreement shall remain effective for such investment for a further period of ten years after the aforementioned date.

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

Done at Brussels, the 3rd day of February 2000, in two original copies, each in the English, Dutch, French and Arabic languages, all texts being equally authentic. In case of a difference of interpretation, the English text shall prevail.

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION: For 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: PIERRE CHEVALIER

For the Walloon Government: PIERRE CHEVALIER

For the Flemish Government: JOHAN SAUWENS

For the Government of the Brussels-Capital Region: PIERRE CHEVALIER

FOR THE GOVERNMENT OF THE REPUBLIC OF YEMEN: ABDULKADER BAJAMAL