

# **AGREEMENT BETWEEN THE BELGIUM-LUXEMBOURG ECONOMIC UNION AND BARBADOS FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

THE KINGDOM OF BELGIUM,

THE WALLOON REGION,

THE FLEMISH REGION,

And THE BRUSSELS-CAPITAL REGION,

As well as

THE GRAND-DUCHY OF LUXEMBOURG

And

BARBADOS

(hereinafter individually referred to as "the Contracting Party", or collectively referred to as "the Contracting Parties"),

DESIRING to create favourable conditions for greater investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiatives and will increase prosperity in the Contracting Parties;

HAVE AGREED as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(a) "companies" means: (i) In respect of Barbados, corporations, firms and associations incorporated or constituted under the law in force in Barbados;

(ii) In respect of Belgium and Luxembourg, any corporation, firm or association incorporated or constituted in accordance with the legislation of the Kingdom of Belgium or the Grand-Duchy of Luxembourg and having its registered office in the territory of the Kingdom of Belgium or the Grand-Duchy of Luxembourg.

For the purposes of this Agreement, a company incorporated or constituted under the law of one Contracting Party but effectively controlled, directly or indirectly, by nationals or companies of the other Contracting Party, shall be treated as a company of the latter Contracting Party.

(b) "environmental legislation" means:

Any legislation of the Contracting Parties in force at the date of the signature of this Agreement or passed after the date thereof or any provision of such legislation, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(i) The prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

(ii) The control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto;

(iii) The protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Contracting Party's territory.

(c) "investment" means:

Every kind of asset and any contribution in cash, in kind or in services, invested or reinvested directly or indirectly and particularly, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance under contract having a financial value; and

(iv) Intellectual property rights, goodwill, technical processes and know-how;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets or contributions in cash, in kind, or in services, invested or reinvested directly or indirectly does not affect their character as investments.

(d) "labour legislation" means:

Any legislation of the Contracting Parties in force at the date of the signature of this Agreement or passed after the date thereof or any provision of such legislation that purports to give effect to the following international labour standards as defined by the International Labour Organisation:

(i) The right of association;

(ii) The right to organise and bargain collectively;

(iii) A prohibition on the use of any form of forced or compulsory labour;

(iv) A minimum age for the employment of children;

(v) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(e) "nationals" means: (i) In respect of Barbados, physical persons deriving their status as Barbados nationals from the law in force in Barbados;

(ii) In respect of Belgium and Luxembourg, any natural person who, according to the legislation of the Kingdom of Belgium or the Grand-Duchy of Luxembourg, is considered as a citizen of the Kingdom of Belgium or the Grand-Duchy of Luxembourg.

(f) "returns" means:

The amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

(g) "territory" means: (i) In respect of Barbados, the territory thereof, the territorial sea and the exclusive economic zone designated under the national laws of Barbados in accordance with international law as an area within which Barbados has sovereign rights and jurisdiction to explore, exploit and preserve the natural resources;

(ii) In respect of Belgium and Luxembourg, the land territory of the Kingdom of Belgium and the land 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 Kingdom of Belgium upon which it exercises, in accordance with international law, its sovereign rights and its jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

## **Article 2. Promotion and Protection of Investment**

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

2. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable

treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Except for measures required to maintain public order or public safety, neither Contracting Party shall in its territory impair, either in law or in practice, by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

### **Article 3. National Treatment and Most-favoured-nation Provisions**

1. Neither Contracting Party shall in its territory, subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any Third State.

2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any Third State.

3. For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 15 of this Agreement.

### **Article 4. Compensation for Losses**

Without prejudice to the other provisions of this Agreement, investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party grants to its own investors or to the investors of the most favoured nation, whichever is more favourable to the investors concerned. Resulting payments shall be freely transferable.

### **Article 5. Expropriation**

1. Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose, security or national interest of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of the Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

### **Article 6. Transfers**

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of all investments and returns including all payments relating thereto. Transfers shall be affected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency with no other expenses than the usual banking cost. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

### **Article 7. Exceptions**

The provisions of this Agreement relative to the grant of treatment no less favourable than that accorded to the nationals or companies of either Contracting Party or of any Third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or free trade area, common market or any other form of regional economic organization to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 8. Settlement of Investment Disputes**

1. Any dispute relating to an investment between an investor of one Contracting Party and the other Contracting Party shall be notified in writing by the investor to the other Contracting Party.

As far as possible, the Parties to the dispute shall endeavour to settle the dispute through amicable negotiations. 2. If the dispute cannot be settled within three months from the notification, the dispute shall be submitted, at the option of the investor, either to the competent jurisdiction of the State where the investment was made, or to international arbitration.

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 judicial remedies be exhausted. 3. In the case of international arbitration, the dispute shall be submitted for settlement by arbitration to one of the hereinafter mentioned organisations, at the option of the investor:

(a) An ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.) in the territory of a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the "New York Convention");

(b) The International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965;

(c) An arbitral tribunal (composed of three arbitrators) established (i) In accordance with the rules of arbitration of the International Chamber of Commerce or the London Court of International Arbitration (L.C.I.A) which will resolve the dispute under the said rules; and

(ii) In the territory of a Contracting State to the New York Convention.

4. 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 or as defence to claim 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 10 of this Agreement.

5. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute and comply with the awards in accordance with its national legislation and applicable international agreements in force.

## **Article 9. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a Third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-

President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own rules of procedure.

## **Article 10. Subrogation**

Where a Contracting Party or its designated agency has guaranteed any indemnity in respect of any investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

## **Article 11. Environment**

1. Recognising the right of each Contracting Party to establish its own levels of domestic environmental protection and environmental (development) policies and priorities, and to adopt or modify accordingly its environmental legislation, each Contracting Party shall strive to ensure that its legislation provides for internationally agreed levels of environmental protection and shall strive to continue to improve its legislation.

2. The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic environmental legislation. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have accepted. They shall strive to ensure that such commitments are fully recognised and implemented by their domestic legislation.

## **Article 12. Labour**

1. Recognising the right of each Contracting Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour legislation, each Contracting Party shall strive to ensure that its legislation provides for labour standards consistent with the international labour standards set forth in paragraph (d) of Article 1 and shall strive to improve those standards in that light.

2. The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic labour legislation. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their obligations as members of the International Labour Organisation and their commitments under the International Labour Organisation Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Contracting Parties shall strive to ensure that such labour principles and the international labour standards set forth in paragraph (d) of Article 1 are recognised and protected by domestic legislation.

## **Article 13. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

## **Article 14. Scope of Application**

This Agreement shall apply to all investment made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred or to claims which have been settled prior to its entry into force.

## **Article 15. Meetings**

1. The representatives of the Contracting Parties shall hold meetings for the purpose of:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging information about legal matters and investment opportunities;
- (c) Reviewing disputes arising out of investments;
- (d) Forwarding proposals on promotion of investment; and
- (e) Studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on any matters of paragraph 1 of this Article, the other Contracting Party shall give prompt response through diplomatic channels on the consultation to be held alternately in Brussels or Bridgetown.

## **Article 16. Entry Into Force**

Each Contracting Party shall notify the other Contracting Party of the fulfilment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the day following the date of receipt of the latter of the two notifications.

## **Article 17. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 15 shall remain in force for a further period of twenty years from the date.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Brussels on the 29th of May 2009, in two original copies, each in the French, Dutch and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE BELGIUM-LUXEMBOURG ECONOMIC UNION:

FOR BARBADOS:

For the Kingdom of Belgium

For the Grand-Duchy of Luxembourg:

Olivier CHASTEL, State Secretary for Foreign Affairs

Maxine McCLEAN, Minister of Foreign Affairs and Foreign Trade

For the Walloon Region:

For the Flemish Region:

For the Brussels-Capital Region: