

AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Belgium,

acting both on its own behalf and on behalf of

The Government of the Grand Duchy of Luxembourg under existing agreements,

The Government of the Region of Wallonia,

The Government of the Region of Flanders and

The Government of the Region of Brussels-Capital, on the one hand,

and

The Government of the Republic of Venezuela, on the other hand

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

Desiring to strengthen their economic cooperation by creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Considering the potential benefit of such an agreement in improving business contacts and strengthening confidence in the area of investments,

Have Agreed as Follows:

Article 1. Definitions

1. The term "investors" shall mean:

(a) "Nationals", ie. any natural person who, under the legislation of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Republic of Venezuela, is deemed a citizen of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Republic of Venezuela respectively;

(b) "Companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Republic of Venezuela and having its head office in the territory of the Kingdom of Belgium, the Grand Duchy of Luxembourg or the Republic of Venezuela respectively, and any legal person effectively controlled by an investor covered by paragraphs 1 (a) and 1 (b);

that have invested in the territory of the other Contracting Party.

2. The term "investments" shall mean any kind of asset whatever or any direct or in direct input in cash, in kind or in services, invested or reinvested by an investor of one Contracting Party in the territory of the other Contracting Party in any sector of economic activity whatever.

The following shall more particularly, although not exclusively, be considered investments for the purposes of this Agreement:

(a) Moveable and immovable property, as well as any other rights in rem, such as mortgages, liens, securities, usufructs and similar rights;

(b) Shares, company shares and any other form of participation, including minority or indirect participation, in companies constituted in the territory of either Contracting Party;

(c) Bonds, claims and rights to any benefit having economic value and linked to an investment;

(d) Copyrights, industrial property rights, technical processes, registered trade names, and goodwill;

(e) Business concessions granted under public law or by contract, including concessions for prospecting for, cultivating, mining or developing natural resources.

Any change in the legal form in which assets and capital have been invested or reinvested shall not affect their status as investments for the purposes of this Agreement.

3. The term "income" shall mean the amounts yielded by an investment including, although not exclusively, profits, interest, capital gains, dividends, royalties and compensation.

4. The term "territory" shall apply to the territory of the Kingdom of Belgium, the territory of the Grand Duchy of Luxembourg and the territory of the Republic of Venezuela, as well as the maritime areas, i.e. the marine and submarine areas which extend beyond the territorial waters of the States in question and over which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

Article 2. Promotion of Investments

1. Each Contracting Party shall encourage investments in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its legislation.

2. In particular, each Contracting Party shall facilitate the conclusion and execution of licensing contracts and commercial, administrative or technical assistance agreements, insofar as such activities are related to investments.

Article 3. Protection of Investments

1. All direct or indirect investments made by investors of one Contracting Party shall be accorded fair and equitable treatment in the territory of the other Contracting Party, in accordance with international law.

2. Without prejudice to any measures necessary to maintain public order, such investments shall be protected at all times and shall not be subjected to any arbitrary or discriminatory measure that might, de jure or de facto, impede their management, maintenance, use, enjoyment or liquidation,

3. In respect of all matters governed by this Agreement, the investors of each Contracting Party shall be accorded, in the territory of the other Contracting Party, treatment no less favourable than that the latter Party accords to its own investors or to investors of the most favoured nation.

4. Nevertheless, such treatment and protection shall not include privileges which may be extended by either Contracting Party to investors of a third State in connection with its participation in or its association with a free trade area, a customs union, a common market or any other form of regional economic organization of a similar nature.

Article 4. Measures of Expropriation or Restriction In Respect of Property

1. Each Contracting Party undertakes to refrain from taking any measure of expropriation or nationalization or any measure which could cause investors of the other Contracting Party to be dispossessed, directly or indirectly, of the investments belonging to them in its territory, unless the following conditions are fulfilled:

(a) The measures shall be taken for reasons of public or national interest;

(b) The measures shall be taken in accordance with a legal procedure;

(c) They shall be neither discriminatory nor contrary to a specific commitment concerning the treatment of an investment;

(d) They shall be accompanied by provisions for the payment of adequate and effective compensation.

2. The amount of the compensation shall correspond to the value in real terms of the investments concerned on the day prior to the adoption or publication of the measures.

Compensation shall be paid in a convertible currency. It shall be paid without undue delay and be freely transferable. It shall earn interest at the normal commercial rate from the date of its determination until the date of its payment.

3. Investors of one Contracting Party whose investments have suffered losses as a result of war or other armed conflict, revolution, state of national emergency, or revolt occurring in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment no less favourable than that accorded to its own investors or to investors of the most favoured nation in respect of restitution, indemnification, compensation or other settlement.

Article 5. Transfers

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer, into or out of its territory, of all payments relating to an investment, including more particularly:

- (a) Amounts required for establishing, maintaining or expanding an investment;
- (b) Amounts required for payments under a contract, including amounts necessary for repayment of loans or payment of royalties and for other payments resulting from licences, franchises, concessions and other similar rights, as well as salaries of personnel of the same nationality as the investor who have been engaged by the latter to provide services as directors, administrators or technicians in direct connection with an investment;
- (c) Income from investments;
- (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.

2. Transfers shall be effected in a freely convertible currency at the rate applicable on the date of transfer to cash transactions in the currency used.

3. Each Contracting Party shall issue the necessary authorizations to ensure that the transfers can be made without undue delay and free of charges other than the usual taxes and costs.

Article 6. Subrogation

1. If one Contracting Party or a public agency of that Party pays compensation to its own investors under an investment guarantee against non-commercial risks, the other Contracting Party shall recognize that the investors' rights and shares have been transferred to the Contracting Party or public agency concerned, without prejudice to the right of subrogation recognized by commercial legislation in the case of insurance against commercial risks.

2. As far as the transferred rights are concerned, the other Contracting Party may invoke against the insurer who is subrogated into the rights of the compensated investors the obligations legally or contractually incumbent on the latter,

Article 7. Applicable Rules

When a matter relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions now existing or that may be entered into by the Parties in the future, the investors of the other Contracting Party may invoke the provisions which are most favourable to them.

Article 8. Special Agreements

1. The treatment of investments made under a special agreement concluded between one Contracting Party and investors of the other Party shall be governed by the provisions of this Agreement and of that special agreement.

2. Each Contracting Party shall at all times ensure respect for the commitments regarding treatment of investments which it has made to investors of the other Contracting Party.

Article 9. Settlement of Investment Disputes

1. Any dispute between an investor of one of the Contracting Parties and the other Contracting Party which affects the application of this Agreement shall be the subject of a written notification, accompanied by a sufficiently detailed memorandum, from the investor.

As far as possible, the parties shall endeavour to settle the dispute amicably by negotiation, where necessary seeking expert advice from a third party, or by conciliation.

2. In the absence of an amicable settlement within six months from the date of notification of the dispute, the dispute shall be submitted, at the investor's option, either to the competent jurisdiction of the State in which the investment was made or to international arbitration. Once made, this choice shall be final.

To this end, each Contracting Party shall agree in advance and irrevocably to the submission of any dispute to such arbitration.

3. In the event of recourse to international arbitration, the dispute shall be submitted to 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.

Should recourse to ICSID prove impossible, the investor may submit the dispute to an ad hoc arbitral tribunal, set up in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Neither Contracting Party that is a party to a dispute may object, at any stage of the arbitration procedure or of the execution of an arbitral award, to the receipt by the investor who is the other party to the dispute of compensation covering all or part of his losses under an insurance policy or under the guarantee provided for in article 6 of this Agreement.

5. The arbitral tribunal shall base its decision on the national law of the Contracting Party which is a party to the dispute in whose territory the investment is located, including the rules relating to conflict of laws, on the provisions of this Agreement, on the terms of any special agreement dealing with treatment of the investment, and on the principles of international law.

6. The arbitral award shall determine only whether the Contracting Party in question has failed to fulfil an obligation under this Agreement, and whether the investor has suffered losses as a result, and shall set the amount of compensation which Contracting Party must pay to the investor.

7. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall undertake to execute such awards in accordance with its national legislation.

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

1. Any dispute relating to the interpretation or application of this Agreement shall be settled, if possible, through the diplomatic channel.

2. Failing settlement through the diplomatic channel, the dispute shall be submitted to a joint commission consisting of representatives of the two Parties; this commission shall meet without undue delay at the request of the initiating Party.

3. If the dispute cannot be settled by the joint commission within six months, it shall be submitted, at the request of either Contracting Party, to an arbitration procedure conducted, in each individual case, in the following manner:

Each Contracting Party shall appoint an arbitrator within two months from the date on which one Contracting Party notifies the other of its intention to submit the dispute to arbitration. Within two months from their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State to serve as chairman of the board of arbitrators.

If these time limits are not met, either Contracting Party shall invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed.

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 or she is prevented from performing this function, the Vice-President of the International Court of Justice shall be invited to make the appointment or appointments. If the Vice-President of the Court is a national of either Contracting Party, or if for any other reason he or she is prevented from performing this function, the most senior member of the Court who is not a national of either Contracting Party shall be invited to make the appointment or appointments.

4. The board thus constituted shall establish its own rules of procedure. Its decisions shall be taken by majority vote; they shall be final and binding on the Contracting Parties.

5. Each Contracting Party shall bear the cost of appointing its arbitrator. The cost of appointing the third arbitrator and the operating costs of the board shall be borne equally by the Contracting Parties.

Article 11. 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 its laws and regulations. It shall not apply to claims or controversies whose causes pre-date its entry into force.

Article 12. Entry Into Force and Duration

1. This Agreement shall enter into force one month from the date on which the Contracting Parties exchange their instruments of ratification. It shall remain in force for a period of 10 years.

Unless one of the Contracting Parties denounces it at least six months before the expiry of its period of validity, it shall be tacitly extended each time for a further period of 10 years, each Contracting Party reserving the right to terminate it by giving written notice at least six months before the expiry of the current period of validity.

2. Investments made before the date of expiry of this Agreement shall remain governed by it for a period of 10 years from that date.

In Witness Whereof, the undersigned representatives, being duly authorized by their respective Governments, have signed this Agreement.

Done at Brussels on 17 March 1998 in duplicate in the French, Dutch and Spanish languages, all the texts being equally authentic. In the event of discrepancies, account shall be taken of the fact that negotiations were conducted in the French language.

For the Belgo-Luxembourg Economic Union:

For the Government of the Kingdom of Belgium, acting both on its own behalf and on behalf the Government of the Grand Duchy of Luxembourg:

E. DERYCKE

For the Government of the Region of Wallonia:

E. DERYCKE

For the Government of the Region of Flanders:

E. DERYCKE

For the Government of the Region of Brussels-Capital:

E. DERYCKE

For the Government of the Republic of Venezuela:

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