

# **Agreement between the belgo-luxembourg Economic Union, of the one part, and the Republic of Rwanda, on the other hand, concerning the encouragement and reciprocal protection of investments**

The Kingdom of Belgium,

The Walloon Region

The Flemish Region,

And the Brussels-Capital Region; and

The Grand Duchy of Luxembourg, on the one hand, and

The Republic of Rwanda, on the other hand,

(hereinafter referred to as the contracting parties),

Desireux 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,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term investor means:

a) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Rwanda is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Rwanda respectively;

b) The "" 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 Republic of Rwanda and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Rwanda respectively.

2. The term investment means every asset and any direct or indirect, in cash or in services, invested or reinvested 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) The actions, shares 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 means the amounts yielded returns by an investment and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties and fees.

4. The term "territory" shall apply to the territory of the Kingdom of Belgium, in the territory of the Grand Duchy of Luxembourg and the Republic of Rwanda, as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the Kingdom of Belgium 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.

5. The term "environmental law" means the law of the Contracting Parties, or any other provision in this legislation, which is primarily concerned with 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 legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Rwanda, or any other provision in this legislation, directly connected with the universally recognized rights of workers listed 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**

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

2. 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.

## **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**

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. As regards the exploitation, management, maintenance, use, enjoyment, sale or other disposition of investments, each Contracting Party shall accord to investors in its territory of the other contracting party a treatment which shall not be less favourable than that it accords to its own investors to investors or of any third State if the treatment is more favourable.

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 accordingly

Ad hoc its laws, each Contracting Party shall endeavour to ensure that its legislation will ensure a high level of environmental protection and shall strive to improve those laws.

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 either party 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 International Labour Organization (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 Contracting Parties recognize that enhanced mutual cooperation provides opportunities to improve labor standards of protection. At the request of either Contracting Party, 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. Deprivation or Restriction of Property**

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 shall be commensurate with the actual value of the investment immediately before the date on which the measures taken or to be made public.

Such compensation shall be settled in any freely convertible currency. they shall be made without undue delay and shall be 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 as regards, restitution, indemnification, compensation or other indemnities, which shall be at least equal to that accorded by the latter Contracting Party to investors of the most favoured nation.

## **Article 8. Transfers**

1. Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of 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 at the rate of exchange applicable on 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 delay and without further burdens than the usual banking costs.

5. The Contracting Parties undertake to implement the provisions of this article in accordance with their respective national legislations on tax matters.

## **Article 9. Subrogation**

1. If one of the contracting parties or a public agency thereof 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. Applicable Rules**

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or international obligations existing at present or future by the contracting parties, investors of the other contracting party may avail itself of the provisions that are most favourable.

## **Article 11. Specific Agreements**

1. Investments covered by a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall at all times ensure respect the obligations it has entered into in respect of investors of the

other contracting party.

## **Article 12. Settlement of Investment Disputes**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party shall be subject to a written notification by the most expeditious party. The notification shall be accompanied by an aide-memoire sufficiently detailed.

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:

— An ad hoc arbitration tribunal established under the Arbitration Rules of the 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;

— The Arbitration Institute of the Stockholm Chamber of Commerce.

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 13. Disputes between the Contracting Parties Concerning the Application or Interpretation , Modification 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, the dispute shall be submitted to a joint commission composed of two representatives from each of the Parties to the maximum, which shall meet at the request of either party and without undue delay.

3. If the Joint Commission cannot settle the dispute within 12 months of its Constitution, 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.

6. Each Contracting Party may notify the other party of its intention to make an amendment to the contents of this Agreement by providing written its proposed amendment. such amendment shall be subject to negotiations between the two parties; once adopted, the amendment shall constitute an amendment to the original agreement.

## **Article 14. Previous Investments**

This Agreement shall also apply to investments made prior to its entry into force by investors of one Contracting Party in the territory of the other party

Contracting in accordance with the laws and regulations of the latter.

## **Article 15. 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 or denounces this agreement shall notify its intention to modify it at least six months before the expiration 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 six months before the date of expiry of the current period of validity.

2. In respect of investments made prior to the date of termination of this Agreement, the provisions of the latter they shall continue to apply for a period of ten years from the date of expiry.

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

Done at Kigali on 16 April 2007 in two originals each in French, Dutch and English languages, all texts being equally authentic. the English text will prevail in case of divergence of interpretation.

## **Bill submitted to the council of state**

Bill consent to the Agreement between the belgo-luxembourg Economic Union, of the one part, and the Republic of Rwanda, on the other hand, concerning the encouragement and reciprocal protection of investments, signed at Kigali on 16 April 2007

### **Article 1**

This Law regulates a matter referred to in article 77 of the Constitution.

### **Art. 2**

The agreement between the belgo-luxembourg Economic Union, of the one part, and the Republic of Rwanda, on the other hand, concerning the encouragement and reciprocal protection of investments, signed at Kigali on 16 April 2007, out its full and complete effect.

## **Council of state opinion 44.077 / 1 of 21 february 2008**

The Council of State, Section legislation, First Chamber, seized by the Minister of Foreign Affairs, on 4 February 2008, a request for an opinion within 30 days, on a draft law approving the Agreement between the "belgo-luxembourg Economic Union, of the one part, and the Republic of Rwanda, on the other hand, concerning the encouragement and reciprocal protection of investments, signed at Kigali on 16 April 2007, provided the following opinion:

At the end of the Agreement in accordance with article 15, it is stipulated that the French, Dutch and English texts are equally authentic, the English text will prevail in case of divergence of interpretation.

It is therefore recommended to submit the English text to members of Parliament.

In all other respects, the pre-draft does not call for any comment.

The panel was composed of

Mr. Van Damme, President, Chamber of

Mr. J. W. van baertet vaerenbergh state advisers,

Mr. Tison associate, legislation, Section

Ms. G. verberckmoes, Registrar.

The report was presented by Mr. P. depuydt, First Legal Chief.

The correlation between the Dutch version and the French version was established under the control of Mr. M. van Damme.

The Registrar,

The President

G. verberckmoes.

Mr. Van Damme.