

AGREEMENT BETWEEN THE KINGDOM OF SAUDI ARABIA AND THE BELGO-LUXEMBOURG ECONOMIC UNION (B.L.E.U.) CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Saudi Arabia,

And

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 Brussels-Capital Region,

(hereinafter referred to as the "Contracting Parties")

Desiring to intensify economic cooperation between both Contracting Parties,

Intending to create favourable conditions for investments by investors of either Party in the territory of the other Party,

Recognizing that the reciprocal promotion and protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. the term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:-

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;
- b) Shares in general, stocks and debentures of companies and other kinds of rights or interests in companies as well as securities issued by a Contracting Party or any of its investors;
- c) Bonds, claims to money such as loans or to any performance having an economic value, associated with an investment;
- d) Intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trade-marks, trade and business secrets, trade names and good-will;
- e) Any right conferred by law or under public contract or any licenses, permits or concessions issued according to law;

Any alteration of the form in which assets are invested shall not affect their classification as investment.

2. The term "returns" means any amounts yielded by an investment such as profit, dividends, royalties, capital gains or any similar fees or payments.

3. The term "investor" means:

a) In respect of the Kingdom of Saudi Arabia:

I - natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;

II - any entity having or having no legal personality and constituted in accordance with the laws of the Kingdom of Saudi

Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;

III - the Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia;

b) In respect of the B.L.E.U.:

I - the "nationals", i.e., any natural person who, according to the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg is considered as a citizen of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg;

II - the "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg and having its registered office in the territory of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg.

4. The term "territory" means:

a) In respect of the Kingdom of Saudi Arabia: means in addition to the zones contained within the land boundaries, the marine and submarine zones over which the Kingdom of Saudi Arabia exercises sovereignty and sovereign or jurisdictional rights under international law.

b) In respect of the B.L.E.U.: shall apply to the territory of the Kingdom of Belgium and to the territory of the Grand-Duchy of Luxembourg, 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 resources.

Article 2.

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

2. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3.

1. All investments made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.

2. Each Contracting Party shall grant to investments, once admitted, and to investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third country.

3. In accordance with its laws and regulations, each Contracting Party shall grant to investments once admitted and to investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.

4. Each Contracting Party shall accord the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favourable than the treatment it accords to its investors or to the investors of a third Country, whichever is more favourable.

5. The provisions in paragraph (2), (3) and (4) of this Article shall not, however, relate to privileges granted by either Contracting Party to the investors of a third country by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.

6. The treatment granted under this Article shall not relate to any taxation matter, nor to advantages which either Contracting Party accords to investors of a third Country by virtue of a double taxation agreement.

Article 4.

1. Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other

Contracting Party.

2. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure, the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party except for the public benefit of that Contracting Party and against prompt, adequate and effective compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry a rate of return determined on the basis of the market prevailing rate of return until the time of payment; it shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

3. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, state of general emergency, or revolt, shall be accorded treatment not less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

4. Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5.

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, the free transfer of payments in connection with an investment, in particular:

- a) The principal and additional amounts to maintain or increase the investment;
- b) The returns, remunerations and allowances;
- c) The repayment of loans;
- d) The proceeds from the liquidation or the sale of the whole or any part of the investment;
- e) The compensation provided for in Article 4.

2. 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.

3. Transfers covered by this agreement shall be made without delay at the prevailing rate of exchange applicable on the date on which the investor applies for the related transfer.

4. This rate of exchange shall correspond to the cross-rate obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights unless the investor has agreed otherwise.

Article 6.

If a Contracting Party or any related agency or public institution or private company makes a payment to an investor under a guarantee it has assumed in respect of an investment made by that investor in the territory of the other Contracting Party the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party, the related agency, the public institution, or the private company.

Article 7.

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement in this context.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-a-vis investors of the other Contracting Party shall be observed.

Article 8.

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 9.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled amicably by the governments of the two Contracting Parties.

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 a dispute cannot thus be settled within twelve months in the ways prescribed above, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

4. Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third country as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

5. If the periods specified in paragraph (4) above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the 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 should 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

6. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counselling in the arbitration proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

Article 10.

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party should be amicably settled as far as possible.

2. If the dispute cannot be settled in the way prescribed in paragraph (1) of this article within six months from the date when the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States. If the investor chooses to file for arbitration, the Contracting Party agrees to the settlement by arbitration and not to request the exhaustion of local settlement procedures.

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(a) If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law of the Contracting Party, the investor cannot at the same time seek international arbitration, and the award rendered by the court shall be binding and shall not be subject to any appeal or remedy other than those provided for in the law of the Contracting Party.

(b) If the dispute is filed for arbitration in accordance with paragraph (2) the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said convention. The award shall be enforced in accordance with domestic law.

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 the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to the guarantee provided for in Article (6) of this Agreement.

Article 11.

1. This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible.
2. This Agreement shall enter into force thirty days after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years. This Agreement shall be automatically extended each time for a further period of ten years, it being understood 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.
3. This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.
4. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

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

Done at Jeddah, on 22-April-2001 in duplicate in the French, Dutch, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA DR. IBRAHIM ABDULAZIZ AL-ASSAF MINISTER OF FINANCE AND NATIONAL ECONOMY

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, For the Walloon Government, For the Flemish Government and For the Government of the Brussels-Capital Region ANNEMIE NEYTS-UYTTEBROECK STATE SECRETARY ATTACHED TO THE MINISTER OF FOREIGN AFFAIRS