COMMUNITY INVESTMENT CODE OF THE ECONOMIC COMMUNITY OF THE GREAT LAKES COUNTRIES (CEPGL)

The Government of the Republic of Burundi,

The Government of the Rwandese Republic,

The National Executive Council of the Republic of Zaire,

Having regard to the Convention of 20 September 1976 establishing the Economic Community of the Great Lakes Countries (CEPGL), and in particular articles 2 and 3 of that Convention;

In view of the Agreement of 31 January 1982 establishing the Community Investment Code of the Economic Community of the Great Lakes Countries (CEPGL);

HAVE AGREED AS FOLLOWS:

Part I. General Provisions

Chapter I. Objectives

Article 1.

Within the framework of the Economic Community of the Great Lakes Countries (CEPGL), hereinafter referred to as the Community, the Community Investment Code aims to define the guarantees, rights, obligations and advantages of joint enterprises and Community enterprises and the obligations of the member States of the Community vis-a-vis such enterprises.

Chapter II. Definitions

Article 2.

For the purposes of this Code:

a) A joint enterprise means a business entity which is a joint proprietorship of all the member States of the Community or in which they hold at least a 51-per-cent majority of the shares, and which is under joint management and financing and has joint decision-making bodies;

b) A Community enterprise means a business entity which meets the following criteria:

i) The criterion of substantial available resources

The enterprise must turn to account either available resources belonging to at least

Two member States or a sufficiently large amount of resources from a single member State the use of which, however, involves another member State of the Community.

ii) The criterion of market size

This criterion is met when the viability of the enterprise requires access to a market broader than that of the host country.

iii) The criterion of volume of investments

The enterprise must show a minimum amount of investment as stipulated in the Community Investment Code.

Iv) The criterion of the nature of the investments

The nature of the investments makes it possible to assess the technological aspects of the enterprise in terms of the objectives being pursued by the Community in its development plan.

v) The criterion of the cost-effectiveness threshold.

This criterion is met when the total estimated returns of the enterprise are higher than the total of its start-up costs and the costs of its sound operation.

Article 3.

For purposes of the application of this Code:

a) The term "national" means any natural or juridical person having the nationality of the CEPGL member country in which the Community enterprise or joint enterprise has been established;

b) The term "Community national" means any natural or juridical person having the nationality of one of the CEPGL member countries;

c) The term "foreign national" means any natural or juridical person not a national of one of the member countries of the Community;

d) The term "worker" refers to any person deemed to be an employed person or in the same category as an employed person under the legislation of the host country;

e) The term "legislation" refers to the laws and regulations of any of the CEPGL member countries;

f) The term "host country" refers to the country in which the Community enterprise or joint enterprise has been established;

g) The term "authorization document" refers to a legal act issued by a competent authority of the Community in the form of an enforceable decision, which notifies the requesting enterprise of the terms of the authorization;

h) The term "founding agreement" refers to a contract concluded between a competent authority of CEPGL and an enterprise authorized under basic regime II, in accordance with the conditions set forth in this Code.

Article 4.

Under this Code, the Community enterprise or joint enterprise may be:

a) An enterprise with national capital, if the invested capital consists of resources mobilized in a member State of the Community and belonging to either nationals or foreign nationals;

b) An enterprise with intra-Community capital, if the majority of the invested capital consists either of a contribution by at least two member States or of a mobilization of financial resources more than half of which belong to natural or juridical persons from more than one member country of the Community;

c) An enterprise with foreign capital, if the majority of the capital invested within the Community consists of resources originating outside the Community and belonging to natural or juridical persons who are foreign nationals;

d) An enterprise with mixed capital, if the invested capital consists of a pooling of national or intra-Community capital and foreign capital.

Article 5.

Under the terms of this Code, Community enterprises or joint enterprises fall into the following categories:

a) Enterprises specializing in the area of economic infrastructure, in particular: water-resource development, bridge construction, road links, ports, communications networks, power-distribution systems and irrigation projects;

b) Enterprises engaged primarily in the development and processing of local resources;

c) Import-substitution enterprises;

d) Service enterprises, in particular: ground, air, river and maritime transport services,

Maintenance and inspection services, tourism activities, financing, insurance and reinsurance

Operations;

e) Any other enterprise deemed to have priority by the competent bodies of the Community.

Chapter III. Guarantees

Section I. General Guarantees

Article 6.

As provided by this Code, the freedom to form and invest capital shall be guaranteed to any natural or juridical person wishing to establish an enterprise in the territory of one of the member States.

Article 7.

Acquired rights of all kinds to individual or collective property shall be guaranteed to all natural or juridical persons, without discrimination either among foreign nationalities or among foreign nationals and nationals. Such rights may not be prejudiced except in the public interest and in accordance with the principles of international law, and subject to the payment of fair and equitable compensation to the injured holder of such rights.

Article 8.

Subject to compliance with existing legislation governing exchange regulations, the CEPGL member States shall guarantee the freedom to transfer capital accumulated in regulated markets, duly earned profits and funds arising from share transfers or from the cessation of business by an enterprise.

Article 9.

Enterprises with intra-Community capital, foreign capital or mixed capital shall be entitled to acquire rights of all kinds as needed for the conduct of their operations - property rights, industrial rights, and administrative licences, authorizations and permits - under the same conditions as enterprises of the host country.

Article 10.

Community enterprises with foreign or mixed capital shall enjoy the same rights and receive the same protection as enterprises with intra-Community capital. These rights extend to patents and trade marks, trade descriptions and labels, and any other industrial property. Such enterprises shall not be subject to any discrimination under the law.

Article 11.

In the performance of their work and in accordance with the legislation of each State,

a) Workers who are Community nationals shall be governed by labour legislation and social laws under the same conditions as nationals. They may participate in trade union activities and belong to bodies defending employee rights. They shall be further governed by the general agreement on social security between the member countries of the Community;

b) Enterprises with foreign capital and the directors thereof shall be represented in organizations representing professional and business interests under the same conditions as enterprises or nationals of member countries of the Community.

Article 12.

Within the framework of this Code, workers who are Community nationals or foreign nationals shall not be liable as individuals to duties, charges and assessments, regardless of their denomination, which are other or greater than those levied on nationals.

Section II. Special Guarantees for Foreign Capital

Article 13.

Within the scope and under the terms of the exchange regulations and subject to the fiscal legislation of the host country, all enterprises with foreign capital or mixed capital authorized as Community enterprises or joint enterprises shall be accorded by the host country:

a) A guarantee regarding the transfer of:

i) The return, in the form of dividends or profits, on foreign capital invested in cash or in kind or in the form of know-how;

ii) The reimbursement of the principal and interest on loans contracted abroad and invested in the undertaking;

iii) The cost of indispensable technical assistance from abroad furnished to the undertaking and directly related with the undertaking's operations in the Community;

Iv) The business income of expatriate officials employed by the undertaking in the Community, directors' percentage of profit and foreign auditors' fees;

b) A guarantee that they will obtain, from the Central Bank, at least the foreign currency required to import the raw materials and spare parts which will ensure the production intended for the Community; the same shall apply to production aids, that is, products which are indispensable for manufacture and which are destroyed or lose their specific characteristics in the course of direct manufacturing operations.

Chapter IV. Authorization

Article 14.

In order to be included under basic regime I or basic regime II, any enterprise as defined in articles 2 and 5 of this Code must receive authorization from the competent authority of CEPGL.

Section I. Conditions for Authorization

Article 15.

Any joint enterprise or Community enterprise conducting or wishing to conduct operations in the territory of a CEPGL member State either in order to rationalize its production methods or for purposes of modernization or extension may qualify for a decision authorizing inclusion under a preferential regime if it meets the criteria provided for article 2.

The minimum volume of investments is set at one million United States dollars or the equivalent.

Section II. Authorization Procedure

Article 16.

Community enterprises or joint enterprises as defined in article 2 (a) and (b) must direct any request for inclusion under an advantageous regime to the Permanent Executive Secretariat of CEPGL, which shall, pursuant to article 19 of the Convention establishing CEPGL, be responsible for transmitting the dossier to the competent bodies of the Community.

The Conference of Heads of State has the competence to issue an authorization. The authorization decision shall be notified to the enterprise by the Permanent Executive Secretariat of CEPGL.

Article 17.

The authorization request shall be accompanied by a supporting dossier in twelve copies, which shall include at least the following information:

a) The legal status of the enterprise;

b) A technical dossier specifying planned activities, the origin, extent and nature of the raw materials, the product quality and price, the production planning, the plan, the facilities, and the patenting, licensing and all other aspects of know-how;

c) An economic and financial dossier specifying the volume of investments, the sources of funding, the capital of the enterprise, the available credit, its market, the number of posts, and a forward study of economic and financial earning power;

d) The start-up date for the project.

If the dossier is complete, the Permanent Executive Secretariat shall transmit two copies to each CEPGL member State.

Section III. Authorization Document

Article 18.

The authorization document shall:

a) Specify the preferential regime under which the authorized enterprise is included;

b) List the activities for which authorization is granted;

c) Indicate the advantages granted, the period during which they will be in force and the

Procedures for their application;

d) Specify the obligations incumbent upon the enterprise, especially with regard to the

Programme for meeting its goals;

e) Determine specific arbitration procedures.

Article 19.

The authorized enterprise shall agree to:

a) Carry out the investment programme for which it was established;

b) Maintain product quality;

c) Keep regular accounts of the kind provided for under the legislation of the host country;

d) Agree to any inspection and monitoring by the host country and by the competent body of CEPGL;

e) Reply within the period specified to all questionnaires and requests for statistics;

f) Respect and ensure staff rights;

g) Establish and keep to a programme for training local manpower and promoting the advancement of managerial staff who are nationals of the member countries of the Community;

h) See to the protection of the environment;

i) Develop local resources;

j) Give priority to furnishing supplies to the CEPGL member States in times of scarcity in the same proportions as in normal times;

k) Give priority to earmarking for member States of the Community the export of the goods produced.

Article 20.

All operations of an authorized enterprise which are not explicitly included in the activities listed in the authorization document shall continue to be governed by the tax-related and other provisions of ordinary law in force in the host country.

Article 21.

Authorization for inclusion under an advantageous regime does not exempt the authorized enterprise from compliance with the political, financial, fiscal and social legislation of the host country.

Part II. ADVANTAGES OFFERED BY THE DIFFERENT AUTHORIZATION REGIMES

Article 22.

There are two authorization regimes which may be granted by the CEPGL authority:

- Basic regime I

- Basic regime II

Chapter I. Authorization Under Basic Regime

Article 23.

Any enterprise as defined under article 2 which meets the conditions for authorization under this Code may benefit from the economic, financial and tax advantages provided for under basic regime I as hereinafter established.

Section I. Economic Advantages

Article 24.

An authorized enterprise may receive financing for the conduct of pre-investment and investment studies from public credit institutions and more specifically from the Development Bank of the Great Lakes States.

It may also take advantage of the technical assistance and consultancy services of the CEPGL member countries, international agencies or foreign countries.

Article 25.

Where necessary, special customs protection measures may be instituted for the benefit of Community enterprises and joint enterprises.

Article 26.

All other things being equal, priority in the award of public services contracts shall be given to the extent possible to authorized enterprises as against enterprises which are outside the Community.

Article 27.

Subject to the regulations of the central banks of the CEPGL member countries concerning foreign exchange, authorized enterprises shall be given priority in the allocation of foreign currency in order to purchase capital goods, raw materials, products and packaging required for their operations.

Section III. Tax Advantages

Article 28.

Basic regime I shall include, for a maximum period of five years for an enterprise, the benefit of the following measures:

a) The application of a single overall import duty and tax rate of between 0 and 5 per cent on equipment and materials, machines and tools which are specifically required for product production and processing;

b) Partial or complete exemption from import duties and taxes and indirect taxes levied inside the Community on:

i) Raw materials and products constituting, wholly or in part, inputs of the products worked or processed;

ii) Raw materials and products, which, while not constituting implements or inputs for the products worked or processed, are destroyed or lose their specific properties in the direct manufacturing process;

iii) Raw materials and products intended for the packaging and non-reusable wrapping of goods worked or processed;

c) The benefit of reduced or non-existent export duties on:

i) Raw materials for use in Community enterprises;

ii) Finished or semi-finished products for use in the CEPGL member countries.

Article 29.

The following tax advantages may be granted to authorized enterprises under basic regime I:

a) Exemption from the direct tax on agricultural, industrial and trading profits during the first five financial years, the first financial year being deemed to be the one during which the first sale or delivery is made either on the Community or the export market;

b) Exemption during the first five years from real estate, mining and forestry fees;

c) Temporary exemption for a period of five years from the real estate tax on developed and undeveloped property;

d) Exemption for five years from trading dues.

Chapter II. Authorization Under Basic Regime II

Article 30.

Authorization under basic regime II shall be granted to a Community enterprise or joint enterprise which meets the conditions for admission to basic regime I, as stipulated in article 23, and in addition one of the following special conditions:

a) A tying-up of capital which justifies an extended amortization period;

b) A project which has priority for the economic and social development of the Community;

c) A project set up outside the limits of urban areas for the purpose of rural development;

d) A mining enterprise.

Section I. Tax Advantages

In addition to the economic and financial advantages defined under basic regime I, basic regime II shall afford the benefit of the tax advantages set forth in articles 32 to 37.

Article 31.

Basic regime II shall grant a stabilized tax regime for direct taxes to the beneficiary enterprise.

Article 32.

The duration of the stabilized tax regime for direct taxes may not exceed 15 years, extended where necessary to include the normal installation time.

Article 33.

During the period for which it applies, the stabilized tax regime shall protect the beneficiary enterprise against any increase in direct taxation which is applicable to it on the date of authorization with regard both to tax assessment and rates and to collection procedures.

In addition, the tax or customs provisions applicable under basic regime I may be extended in whole or in part to basic regime II.

Article 34.

The stabilized tax regime may be extended to customs duties and charges. In this case, the stabilization may apply only to customs and excise dues and the turnover tax on imports. The imported equipment and materials covered under the stabilization of customs and excise dues and the turnover tax on imports shall be exhaustively listed in an annex to the enacting agreement.

Article 35.

If there is a change in the tax regime under ordinary law, an enterprise which benefits from a stabilized tax regime may request a revision of its enacting agreement.

Article 36.

Any legal or regulatory provision which runs counter to these regulations shall not be applicable during the same period to enterprises which benefit from the stabilized tax regime.

Section II. Enacting Agreement

Article 37.

The authorization of a Community enterprise or a joint enterprise by the competent CEPGL authority under basic regime II shall include, in addition to the advantages defined in articles 31, 32, 33 and 34 of this Code, the benefit of an enacting agreement.

Article 38.

The enacting agreement shall establish its duration and the procedures for its extension andmust include the same information as specified in articles 18, 19, 20 and 21 of this Code. With regard to taxation, the enacting agreement shall include a list of the stabilized taxes and fees as well as the rates applicable for the duration of basic regime II.

The enacting agreement shall define the various commitments of the enterprise, including general operating conditions, minimum production plant programmes, vocational training and all other obligations accepted by the enterprise with regard to the host country and the other countries of the Community.

Article 39.

Revision of an enacting agreement that has been concluded may be negotiated on the initiative of one of the parties

In the absence of agreement by the partners on the exact terms of the revision, the original regime shall continue to apply for the duration initially decided upon.

Article 40.

The enacting agreement may not contain any commitment, on the part of the states members of the community, which may have the effect of holding an enterprise harmless in respect of losses, costs, or shortfalls arising from changes in technology, the economic situation or factors specific to the enterprise.

Article 41.

An enterprise shall forfeit the advantages provided for under articles 24, 25, 26, 27 and 28 of this Code if it defaults through:

- Failure to meet a deadline for project execution, or technical specifications for product quality;

- A product price which is very high in relation to the price of the same product imported from outside the Community;

- Failure to supply the Community market on a regular basis;

- Mismanagement having a potential impact on supplies to the Community market.

Article 42.

If default is due to the economic situation, a lack of operating facilities granted to the enterprise by the host country or the failure by States members of the Community to observe Community commitments, the dispute shall be settled in accordance with articles 50, 51, 52, 53 and 54 of this Code.

Part III. SPECIFIC PROVISIONS APPLICABLE TO COMMUNITY ENTERPRISES AND JOINT ENTERPRISES OF CEPGL

Chapter I. Specific Provisions for Community Enterprises

Article 43.

The host State must provide guarantees concerning the arrangements for the supply of water, electricity and other resources necessary for operations as well as those for the inward and outward transport of goods.

Article 44.

The competent authorities of the host country shall ensure that the economic unit informs the other member States about the running of an enterprise through the CEPGL Permanent Executive Secretariat. In the case of an enterprise which is still under consideration, however, this responsibility shall rest entirely with the host country.

Article 45.

Any request to be addressed to an agency or country on behalf of a Community enterprise shall be jointly signed by the partner countries.

Article 46.

The location of the head office of a Community enterprise shall be specified in the authorization document or the enacting agreement.

Chapter II. Specific Provisions for Joint Undertakings

Article 47.

Joint enterprises shall be established by the CEPGL Conference of Heads of State.

Article 48.

In the design, preparation and execution of their programmes, joint enterprises shall obtain technical and financial assistance primarily from the specialized agencies and institutions of the Community.

Article 49.

For contracts to carry out the research and work of a joint enterprise, priority shall be given, in cases involving equal competence, to the research institutes, consultants and consulting engineers and executing agencies of the CEPGL member States.

Part IV. Settlement of Disputes

Chapter I. Revocation Procedure

Article 50.

Any CEPGL member country may bring to the attention of the CEPGL Permanent Executive Secretariat a case involving serious dereliction, duly recorded, by an enterprise which benefits from the advantages provided for under one of the basic

regimes.

The CEPGL Permanent Executive Secretariat shall carry out an investigation and give formal notice to the enterprise to make good the dereliction in question by registered letter or letter with acknowledgement of receipt.

Article 51.

If the formal notice has no effect within a period of 90 days, the permanent executive secretariat shall transmit the case to the CEPGL Council of Ministers and State Commissioner for consideration.

A copy of the letter shall be sent to the member States and to the enterprise in question. The enterprise must submit its plea in defence within a maximum period of one month from the date of receipt of the letter as attested by the postmark or from the date of the acknowledgement of receipt.

Article 52.

The decision to revoke authorization shall be taken by Conference of Heads of State on the advice of the Council of Ministers and the State Commissioner and following consideration of the information submitted by the parties concerned.

Article 53.

Within a maximum period of 30 days from the date of notification of the revocation decision, the enterprise may appeal the decision in accordance with the arbitration procedure provided for under article 54.

Failing an appeal or if the appeal is submitted late, the revocation decision handed down by the Conference of Heads of State shall remain definitive.

Chapter II. Arbitration

Article 54.

The settlement of disputes arising from the provisions of an enacting agreement and from the application of the authorization document of an authorized enterprise, as well as the determination of any compensation due because of failure to honour commitments entered into, may be the subject of an arbitration procedure as provided for in each authorization document or enacting agreement.

The said arbitration procedure shall contain the following provisions:

(a) Each party shall appoint an arbitrator;

(b) In case of disagreement between the arbitrators, a third arbitrator shall be appointed by mutual agreement between the parties. If no agreement is possible, the authorization or enacting agreement shall stipulate the procedure for appointing the third arbitrator;

(c) The decision shall be handed down by a majority of the arbitrators, who shall determine their own procedures, and shall be definitive in nature;

(d) In the case of Community enterprises the majority of whose capital is initially foreign-held, however, the authorization document may provide for international arbitration procedures replacing those referred to above.

Part IV. Final Provisions Article 55

Without prejudice to acquired rights, the Code may be modified or amended by the Conference of Heads of State of CEPGL.

Article 56.

This Code shall enter into force on the date of deposit of the last instrument of ratification of the agreement on its establishment with the Permanent Executive Secretariat of the Economic Community of the Great Lakes Countries.

Done at Gisenyi, on 31 January 1982.

President of the Republic of Burundi

President of the Republic of Rwanda

President of the Republic of Zaire