

# **AGREEMENT BETWEEN THE BELGIUM-LUXEMBOURG ECONOMIC UNION AND THE REPUBLIC OF BURUNDI CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Belgium, acting in the name and on behalf of the Grand Duchy of Luxembourg, under existing agreements, and the Government of the Republic of Burundi,

Desiring to intensify economic cooperation in order to create favourable conditions for investments by nationals of one Contracting Party in the territory of the other contracting party,

Whereas an agreement is likely to stimulate private business initiatives and to enhance confidence in the field of investment,

Recognizing that discrimination performed by either of the Contracting Parties, on the basis of nationality, in respect of investments made in its territory by investors of the other contracting party, is inconsistent with any stable investment framework or with any optimum and efficient use of economic resources,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Convention:

1. The term "investor" means:

a) Any natural person who, according to the laws of Belgium or Luxembourg, Burundian respectively is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Burundi;

b) Any legal person constituted under the laws of Belgium or Luxembourg Burundi respectively, and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Burundi.

2. The term "investment" means any direct or indirect as well as any capital invested any asset or reinvested in any establishment in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Convention:

a) The movable and immovable property as well as any other rights in rem such as mortgages, pledge, security interests, usufruits and similar rights;

b) The stocks, shares and any other forms of participation in companies;

c) The debt securities issued by undertakings, claims and rights to any performance having an economic value;

d) Intellectual and industrial property rights, including copyrights, patents, trademarks, trade names, know-how and goodwill;

e) The concessions under public law or under contract, including concessions in agricultural research, extract or exploit natural resources.

3. The term "returns" shall mean amounts yielded by an investment including but not limited to the following: interests increases, capital, profits, dividends, royalties and other fees.

Any alteration of the form in which assets and capital is invested or reinvested shall not affect their character as "investment within the meaning of this Agreement.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall promote and admit in its territory in accordance with its laws, investments made by investors of the other contracting party, as well as all activities relating thereto.
2. In particular, each Contracting Party authorizes the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, provided that these activities in connection with investments referred to in paragraph 1.
3. This Agreement shall apply to investments and associated activities undertaken within the territory of each Contracting Party by investors of the other Contracting Party, even before its entry into force.

## **Article 3. Protection of Investments**

1. Each Contracting Party undertakes to provide in its territory fair and equitable treatment to direct or indirect investments and related activities undertaken by investors of the other contracting party.
2. These investments and activities shall 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.
3. The treatment and protection under paragraphs 1 and 2 shall not be less favourable than that enjoyed by the nationals of the host State of investment. They shall be at least equal to those enjoyed by investors of the most favoured nation and shall in no case be less favourable than those accorded by international law.

## **Article 4. Deprivation or Restriction of Property**

1. Each Contracting Party undertakes not to take any measure of deprivation or restriction of property, or any other measure having similar effect against investments located in its territory except when the requirements of public interest or national security require exceptionally, in which case 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 agreement as referred to in article 7 (3);
- c) They are accompanied by provisions for the payment of adequate and effective compensation.

2. The compensation referred to in paragraph 1 (c) shall represent the market value of the affected investments immediately before the date on which the measures are taken or, where appropriate, on the day before the date on which they were made publicly available. However, where an investment has no value or when the investor concerned proves that the market value of the expropriated investment is lower than the actual value and objective, the compensation shall be determined on the basis of the latter value.

Any compensation shall be paid in the currency of the Member State to which the investor concerned or in any other convertible currency.

It shall be paid without delay, be effectively realizable and shall include interest accruing from the date of expropriation, a reasonable commercial rate.

It shall be freely transferable.

3. Investors of either Contracting Party whose investments suffer losses in the course of a war or other armed conflict, a state of emergency, national or riot occurring in the territory of the other Contracting Party, shall be accorded by the latter in a non-discriminatory manner and not less than that accorded to the investors of the most favoured nation treatment, as regards compensation, restitution, compensation or other remedies.

Compensation payable pursuant to this paragraph shall be paid in accordance with the provisions of paragraph 2.

4. The treatment referred to in paragraphs 1, 2 and 3 shall apply to investors of either Contracting Party who in any form of direct or indirect participation in an enterprise in the territory of the other contracting party.

5. In all cases, treatment shall be at least equal to that the host State to the concerned investment accords to its nationals and shall not be less favourable than that accorded to the investors of the most favoured nation. There shall be no less than the treatment granted by international law.

## **Article 5. Transfers**

1. With respect to investments in its territory, each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and in particular, though not exclusively:

- a) Income as referred to in article 1, paragraph 3;
- b) The amounts required for the repayment of loans contracted regularly;
- c) The recovery of proceeds from claims; total or partial liquidation of investments;
- d) Compensation paid pursuant to article 4.

2. Each Contracting Party undertakes to grant the required authorisations to ensure the execution of transfers without undue delay and without any fees or charges other than the usual banking costs.

It shall be deemed to be made without delay within the meaning of this article, any transfer which normally takes place within the period necessary for the completion of formalities transfer. The period shall begin to run from the date of the submission of the request and shall in no case exceed two months.

3. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force for each category of operations.

4. The treatment referred to in paragraphs 1, 2 and 3 shall not be less favourable than that accorded to investors of the most favoured nation in similar situations.

## **Article 6. Subrogation**

1. If under a legal or contractual guarantee covering non commercial investment risks, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the Rights of the investor indemnified.

2. In accordance with the guarantee given to the Investment, the insurer concerned shall be entitled to claim all the rights that the investor might exercise if the insurer had not been subrogated.

3. Any dispute between one Contracting Party and the insurer of an investor of the other Contracting Party shall be settled in accordance with the provisions of article 8 of this Convention.

## **Article 7. Additional Obligations**

1. This Agreement shall be without prejudice to:

- a) The laws, regulations and administrative practices or procedures where the administrative or judicial decisions of one or both of the contracting parties;
- b) International legal obligations;
- c) The obligations of either of the Contracting Parties, including those contained in an investment agreement or in a particular investment authorization

The existing one or other, before or after its entry into force.

2. Where a matter concerning an investment is simultaneously governed by this Agreement and by one or more of the provisions referred to in paragraph 1, investors may still avail itself of the provisions that are most favourable.

3. Investors of one Contracting Party may conclude with the other contracting party specific agreements which cannot be contrary to this Convention.

Investments made under such agreements are, moreover, governed by this Convention.

## **Article 8. Investment Disputes**

1. For the purposes of this article, a dispute relating to an investment is defined as a dispute concerning:

- a) The interpretation or application of a particular investment agreement between a Contracting Party and an investor of the other contracting party;
- b) The interpretation or application of any investment authorization granted by the authorities of the host State governing foreign investment;
- c) The alleged breach of any right conferred by this Agreement or created with regard to investment.

2. Any dispute related to investments made subject to a written notification, accompanied by an aide-memoire sufficiently detailed established on the initiative of the investor of one of the Parties, to the other Contracting Party.

The dispute shall preferably be settled amicably by an agreement between the parties to the dispute or by conciliation between the Contracting Parties, through diplomatic channels.

3. If the dispute cannot be settled within three months from the date of the written notification mentioned in paragraph 1, it shall be submitted, at the request of the investor concerned, conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (ICSID).

To this end, each contracting party hereby gives its consent irrevocable, advance and that any such dispute shall be submitted to the ICSID.

This consent implies that each Contracting Party shall waive the requirement that the internal administrative or judicial remedies have been exhausted.

4. Neither of the Contracting Party, Party to the dispute, can raise objection, at any stage of the arbitration proceedings or in any other and capacity 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 6.

5. The arbitration body shall decide on the basis of:

- The national law of the Contracting Party involved in the dispute in whose territory the investment is located, including its rules on the Conflict of Laws;
- The provisions of this Convention;
- In terms of the specific commitments in respect of the investment;
- The rules and principles of International Law recognized.

6. The arbitration awards shall be final and binding on the parties to the dispute.

## **Article 9. Disputes of Interpretation and Implementation between Contracting Parties**

1. Any dispute between the contracting parties concerning the interpretation or application of this Convention shall, as far as possible, be settled through consultation between the two parties, or by any other diplomatic channels.

If the dispute is submitted to a joint commission composed of the representatives of the two contracting parties. it shall meet within two months, at the request of either party.

2. If the Joint Commission cannot settle the dispute within six months from the date on which the dispute has been notified, the dispute shall be submitted to arbitration proceedings, at the request of one of the Contracting Parties.

3. In each case, the arbitral tribunal shall comprise three arbitrators: each Contracting Party shall appoint an arbitrator within two months of the receipt of the request for arbitration. the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator as Chairman, who is a national of a third State. The Chairman shall be appointed within two months of the appointment of the other two arbitrators.

4. If the arbitral tribunal has not been constituted within the time limits specified in paragraph 3, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments.

If the President is a citizen of either Contracting Party or is prevented, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a citizen of either Contracting Party or is prevented, the oldest member of the International Court of Justice who is not a citizen of either Contracting Party and who may act, shall be invited to make the necessary appointments.

5. Unless otherwise agreed by the contracting parties, the decision of the arbitral tribunal shall be adopted within ten months from the date of its establishment.

6. The tribunal shall determine its own rules of procedure.

Its decisions shall be taken by a majority of votes and shall be final and binding on the contracting parties.

7. Each Contracting Party shall bear the costs arising from the appointment of its arbitrator and its representation in the arbitration proceedings. The costs arising from the designation of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

However, the court may specify in its decision that a higher proportion of costs shall be borne by one of the Contracting Parties and this decision shall be binding.

## **Article 10. Entry Into Force and Duration**

1. This Agreement shall enter into force thirty days after the date of the exchange of instruments of ratification. It shall remain in force for an initial period of ten years and shall thereafter whenever tacitly extended for another ten years unless one of the Contracting Parties notifies the other party of the notice through diplomatic channels at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of the present Agreement shall continue to apply for a further period of ten years from the date of the expiry.

Done at Brussels on 13 April 1989 in two originals in the French language.

For the Belgium-Luxembourg Economic Union

L. TINDEMANS

For the Republic of Burundi

C. MBONIMPA