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No. 7853

BELGIUM
and
CONGO (DEMOCRATIC REPUBLIC OF)

**Convention concerning the statutes of "the Belgo-Congolese Amortization and Administration Fund".
Signed at Brussels, on 6 February 1965**

Official text : French.

Registered by Belgium on 8 July 1965.

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et
CONGO (RÉPUBLIQUE DÉMOCRATIQUE DU)

**Convention relative aux statuts du "Fonds belgo-congolais d'amortissement et de gestion". Signée
à Bruxelles, le 6 février 1965**

Texte officiel français.

Enregistré par la Belgique le 8 juillet 1965.

[TRANSLATION — TRADUCTION]

No. 7853. CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE DEMOCRATIC REPUBLIC OF THE CONGO CONCERNING THE STATUTES OF "THE BELGO-CONGOLESE AMORTIZATION AND ADMINISTRATION FUND". SIGNED AT BRUSSELS, ON 6 FEBRUARY 1965

His Majesty the King of the Belgians on the one hand, and

The President of the Democratic Republic of the Congo on the other hand,

Having regard to articles 5 to 13 of the Convention of 6 February 1965² between the Kingdom of Belgium and the Democratic Republic of the Congo for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony,

Have agreed as follows :

CHAPTER I

CONSTITUTION — PURPOSE — HEADQUARTERS

Article 1

The Belgo-Congolese Amortization and Administration Fund, hereinafter referred to as "the Fund", is established by article 5, paragraph 1, of the Convention of 6 February 1965 between the Kingdom of Belgium and the Democratic Republic of the Congo for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony.

Article 2

The Fund shall be governed by the provisions of articles 5 to 13 of the aforementioned Convention and by these Statutes. It shall also be governed, although in a subsidiary degree, by the law of the State in which its headquarters is situated.

¹ In accordance with article 29, the Convention came into force on 11 May 1965, the date of entry into force of the Convention between Belgium and the Democratic Republic of the Congo for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony (see p. 227 of this volume); the exchange of the instruments of ratification of these two Conventions took place at Leopoldville, on 11 May 1965.

² See p. 227 of this volume.

Article 3

The Fund shall possess legal personality.

Article 4

The headquarters of the Fund shall be at Brussels, this term being understood as comprising all the communes of the greater Brussels area.

Article 5

The purpose of the Fund is defined in article 5, paragraph 2, of the aforementioned Convention.

CHAPTER II

RESOURCES

Article 6

The resources of the Fund shall be composed of :

- (1) The sums which, in accordance with the provisions of the first operative paragraph, sub-paragraph (3) of the Protocol of Provisional Application of the aforementioned Convention of 6 February 1965, shall be placed at the disposal of the Fund on the date of the entry into force of the said Convention ;
- (2) The annual contributions provided for in article 11, paragraph 1, of the aforementioned Convention, placed at its disposal in accordance with the provisions of article 12, paragraphs 1, 2 and 3, of the said Convention ;
- (3) All other funds which may be assigned to it ;
- (4) The interest earned by the funds under its administration.

CHAPTER III

CONTROL

Article 7

1. The Fund shall be placed under the control of a Mixed Committee of Ministers, hereinafter referred to as " the Mixed Committee ". The Mixed Committee shall be composed of four ministers, of whom two shall be Belgian ministers and two Congolese ministers : namely, in each case, the minister responsible for foreign affairs and the minister responsible for finance or, failing either or both of these, one or two other ministers.

2. The Mixed Committee shall meet at the request of either Government when a decision incumbent upon it or the ratification of a decision submitted

to it under these Statutes is opposed by one of its members and an agreement on a decision cannot be obtained through the diplomatic channel within one month after such member has signified his opposition.

3. The resolutions of the Mixed Committee shall be taken by the unanimous decision of the four members.

4. The Mixed Committee shall meet either at Leopoldville or at Brussels.

CHAPTER IV

ADMINISTRATION

Article 8

The Fund shall be administered by a Board of Directors composed of a Chairman, a Vice-Chairman and three Directors, including :

- (1) One Chairman or Vice-Chairman and one Director, both appointed by the Government of the Kingdom of Belgium ;
- (2) One Chairman or Vice-Chairman and one Director, both appointed by the Government of the Democratic Republic of the Congo ;
- (3) The Managing Director, chosen by the Mixed Committee, who shall be an *ex officio* member of the Board of Directors and who shall be responsible for the day-to-day administration of the Fund.

The members of the Board of Directors must be of Belgian or Congolese nationality and must be in possession of their civil and political rights in the State of which they are nationals.

Article 9

The members of the Board of Directors provided for in article 8, subparagraphs (1) and (2) above shall be appointed for a term of six years and may be reappointed. The terms of office of those initially appointed shall expire at the end of the sixth full financial year.

Membership shall be ended by the member's death or voluntary or mandatory resignation or the expiry of his term of office. Any member who, without a reason recognized as valid by the Board of Directors, absents himself from three consecutive meetings shall be deemed to have resigned.

Where the term of office has not expired, the Government concerned shall arrange, for the time needed to complete the term of office, for the replacement of the member who has left the Board of Directors. In such a case, the replacement shall be effected in accordance with the rules laid down concerning appointment.

Article 10

1. The members of the Board of Directors shall not be required to deposit any qualification holdings.

They may receive attendance fees.

Any subsistence or travelling expenses which they may incur shall be repaid upon the production of statements supported by all pertinent documents.

2. The Mixed Committee shall determine the amount and the procedure for payment of attendance fees and all other allowances.

It shall also determine the emoluments and allowances of the Managing Director.

3. The repayments, emoluments and allowances specified in paragraphs 1 and 2 above shall be met by the Fund.

Article 11

The offices of Chairman and Vice-Chairman of the Board of Directors shall be held until the end of the first full financial year by the Chairman or Vice-Chairman appointed by the Belgian Government and the Chairman or Vice-Chairman appointed by the Congolese Government respectively.

Thereafter, from 1 July of each year onwards, the office of Chairman shall be held alternately by the Chairman or Vice-Chairman appointed by each of the two Governments.

The Chair shall be taken by the Vice-Chairman whenever the Chairman is unable to act.

The Board of Directors shall appoint as its Secretary a person not a member of the Board who shall attend the meetings of the Board but shall have no voice in its decisions.

Article 12

1. The Board of Directors shall be convened by its Chairman at least once every six months. Furthermore, the Chairman shall be bound to convene the Board within fifteen days if he is invited to do so by at least half the Government-appointed members or by the Mixed Committee.

2. Any Government-appointed member of the Board of Directors who is unable to act may authorize the other member of the Board appointed by his Government to act on his behalf.

3. The proceedings of the Board shall not be valid unless at least three Government-appointed members are present or represented.

4. The votes of at least three Government-appointed members of the Board shall be required for the adoption of a valid decision.

5. The proceedings of the Board of Directors shall be recorded in minutes which shall be signed by the Chairman and by one member appointed by the other Government.

6. The Chairman may submit to the members of the Board, by registered letter, any proposals for decisions relating to the activity of the Fund.

Such decisions shall become effective and shall produce the same effects as decisions taken after deliberation if, within the time-limit laid down in the letter of transmittal, no member has explicitly signified his opposition or suggested any amendment. Such decisions shall be recorded in the minutes of the next meeting of the Board.

Article 13

1. The Board of Directors shall be invested with the broadest powers to act on behalf of the Fund and to perform or authorize all acts and operations necessary to the fulfilment of its purpose.

2. It shall possess, in particular, the following powers which shall not be delegated :

It shall define the general policy of the Fund ;

It shall lay down the rules of procedure of the Fund ;

It shall conclude with the Managing Director his contract of employment subject to article 10, paragraph 2, above ;

It shall prepare estimates of the income and expenditure of the Fund ;

It shall draw up the annual report, progress reports, inventories and accounts of the Fund ;

It shall authorize the acquisition, exchange and sale of immovable property ;

It shall give its opinion, whenever it is consulted by the Belgian or Congolese Government or by the Mixed Committee, on all questions relating to the activity of the Fund.

3. It may delegate to the Managing Director, in general or specific terms, all or part of its powers and, in particular, those relating to the following matters, the list of which is indicative and not limitative :

The organization and operation of the services of the Fund ;

The employment under contract of the personnel of the Fund ;

The investment of available funds ;

Contracts, tenders and awards at a fixed price or otherwise, concerning the activity of the Fund ;

Judicial proceedings as plaintiff or defendant ;

Arrangements, compromises, consents, waivers and subrogations, cancellation of registration of liens, seizures, objections and all acts of conservation.

Article 14

1. The decisions of the Board of Directors on the following matters shall be subject to approval by the Mixed Committee :

The general policy of the Fund ;

The setting of the date for the closure of subscription of the loan issued by the Fund under article 5, paragraph 2, sub-paragraph (2), of the aforementioned Convention of 6 February 1965 between the Kingdom of Belgium and the Democratic Republic of the Congo for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony ;

The estimates of the income and expenditure of the Fund ;

The annual report of the Fund, inventories and accounts ;

The report of the trustee who shall be appointed to examine the accounts and balance-sheets in accordance with the provisions of article 17, paragraphs 1 and 2 below ;

The dissolution of the Fund in virtue of the accomplishment of its purpose.

The above decisions of the Board of Directors shall be submitted by the Chairman of the said Board to the members of the Mixed Committee for approval.

The aforementioned decisions of the Board of Directors shall be deemed to have been approved if no member of the Mixed Committee signifies his opposition within one month from the date on which those decisions were dispatched by registered post.

If any member of the Mixed Committee signifies his opposition, the procedure laid down in article 7, paragraph 2, above shall be applied.

2. The Chairman of the Board of Directors may also, if he considers it necessary, submit to the Mixed Committee any question concerning the administration of the Fund.

CHAPTER V

SIGNATURE OF ACTS

Article 15

1. The acts of the Board of Directors shall be signed by the Chairman and by one Director representing the other Government.

2. Acts of day-to-day administration, acts for which powers have been delegated and acts disposing of assets of the Fund must always bear two signatures.

These two signatures shall be :

(1) Either that of the Managing Director and that of one other Director ;

- (2) Or that of the Managing Director and that of a member of the staff designated for that purpose by the Board of Directors on the proposal of the Managing Director ;
- (3) Or those of two members of the staff designated for that purpose by the Board of Directors on the proposal of the Managing Director.

CHAPTER VI

LIABILITY OF THE DIRECTORS

Article 16

1. The members of the Board of Directors of the Fund shall bear civil liability in accordance with the rules of ordinary law of the host State, individually or collectively as the case may be, towards the Fund or towards third parties for any negligence, fault or imprudence on their part in or upon the application of this Convention or of the Convention of 6 February 1965 for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony, particularly as regard the administration of the Fund.

An action based upon their civil liability towards the Fund may be brought either by the Fund itself, or by the Belgian or Congolese Government at the request of the Mixed Committee.

2. For the purposes of the application of criminal law, the members and the Secretary of the Board of Directors shall be subject to the rules of professional secrecy.

CHAPTER VII

ACCOUNTS — BALANCE-SHEET AND BUDGET

Article 17

1. The balance-sheet of the Fund shall be drawn up as at 30 June of each year and for the first time at the end of the first full financial year.

2. The Board of Directors shall draw up, before 30 November of each year, a general income and expenditure account and the balance-sheet for the financial year ending on the previous 30 June.

Before being approved by the Board, this account and this balance-sheet must be examined by a trustee appointed by the Board of Directors.

The Managing Director shall submit to the Board of Directors, not later than 31 October, the draft general account and balance-sheet and, annexed thereto, the report of the trustee.

After being approved by the Board of Directors and the Mixed Committee, the account and the balance-sheet shall be published in the *Moniteur Congolais*, second part, and in the annexes to the *Moniteur belge*.

3. The Board of Directors shall prepare, before 30 April of each year, the draft estimates of income and expenditure for the next financial year.

CHAPTER VIII

MISCELLANEOUS PROVISIONS

Article 18

The installations and archives of the Fund shall be inviolable in both States.

Article 19

The property and assets of the Fund shall not be subject to seizure or to measures of compulsory execution save by order of a court of the host State.

Article 20

The Fund, its assets, property and income and the operations and transactions carried out under this Convention shall be exempt in both States from all taxes and duties except such taxes, duties and charges as solely constitute payment for public utility services.

Article 21

The Fund shall be exempt in the territory of the High Contracting Parties, with respect to its activity, from all restrictions, legislation and control of any kind. In particular it shall not be subject, either in Belgium or in the Congo, to legislation concerning the control of exchanges, banks, savings banks, credit institutions or financial agencies of any kind.

Article 22

Through agreements approved by the Board of Directors, the Fund may entrust the execution of certain works to public services or to public or private institutions, agencies or enterprises.

Article 23

1. The Fund may purchase only such movable and immovable property as is strictly necessary for its operation.
2. Its available capital may be invested only on a short-term basis.

Article 24

The securities presented to the Fund in payment of subscriptions to the three and one-half per cent forty-year loan to be issued by the Fund under

article 5, paragraph 2, sub-paragraph (2), of the aforementioned Convention of 6 February 1965 shall be given a distinguishing mark.

Article 25

Bonds of the loan referred to in article 5, paragraph 2, sub-paragraph (2), of the Convention of 6 February 1965 which are redeemed for amortization or amortized by the drawing of lots shall be cancelled by perforation and by the affixing of a stamp at the time of their presentation to the agency responsible for the financial service of the said loan.

Article 26

Bonds of the loan referred to in the preceding article which are amortized either by redemption or by the drawing of lots shall be destroyed before a court bailiff, in the presence of a representative of the Board of Directors.

A record of such destruction shall be drawn up in three copies, of which one shall be kept by the Minister of Finance of Belgium, one by the Minister of Finance of the Congo and the third by the Fund.

CHAPTER IX

LIQUIDATION

Article 27

The Fund shall have a maximum lifetime of forty years.

The Fund may be dissolved only in virtue of the accomplishment of its purpose. Such accomplishment shall be determined by decision of the Board of Directors.

Article 28

1. Upon the dissolution of the Fund, the Board of Directors shall take the necessary steps to set aside, out of the assets of the Fund, the sums required for the payment of outstanding debts which have not been claimed by the date of dissolution.

2. After all liabilities have been met, the remaining balance of the property and assets of the Fund shall be divided between the two States in the proportion of 210/510ths for the Kingdom of Belgium and 300/510ths for the Democratic Republic of the Congo.

3. After its dissolution, the Fund shall be deemed to exist for the purposes of its liquidation.

4. The balance of the sums set aside at the time of dissolution for the payment of outstanding debts which have not been claimed by the date of dissolution shall be divided in the same proportion between the two States upon the expiry of the legal periods of limitation in force in the host State.

CHAPTER X

FINAL PROVISION

Article 29

This Convention shall be ratified by the High Contracting Parties in accordance with their respective constitutional rules.

The exchange of the instruments of ratification shall take place at Leopoldville.

This Convention shall enter into force on the date of the entry into force of the Convention of 6 February 1965 for the settlement of questions relating to the public debt and portfolio of the Belgian Congo Colony.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Brussels, on 6 February 1965, in duplicate, both texts being equally authentic.

For the Kingdom on Belgium :

P. H. SPAAK

A. DEQUAE

For the Democratic Republic
of the Congo :

M. TSHOMBÉ

D. NDINGA

[SEAL]
