

Agreement for the Reciprocal Promotion and Protection of Investments between the Government of the Arab Republic of Egypt and the Government of the Republic of Sudan

The Government of the Arab Republic of Egypt and the Government of the Republic of Sudan, hereinafter referred to as the "Contracting Parties";

The Government of the Arab Republic of Egypt and the Government of the Republic of Sudan, hereinafter referred to as the "Contracting Parties";

Desiring to create favorable conditions for investment in both countries, and to strengthen their economic relations, especially in the field of investment of capital by individuals or companies of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the Agreement for the Reciprocal Promotion and Protection of Investments, in accordance with legislation, will be an incentive for the stimulation of initiatives in this area;

Have agreed as follows:

Article 1. Definitions

For the purpose of this agreement:

1) The term "Investment" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter, and shall include, in particular, though not exclusively:

- a) Moveable and immovable property rights as well as any other rights in kind such as mortgages, privileges, guarantees, usufructuary rights and other similar rights.
- b) Shares, bonds, debentures and any other form of participation in companies.
- c) Claims to money or to any performance under contract having a financial value associated with investment.
- d) Copyrights, industrial property rights, intellectual property rights, business connections, goodwill and other similar rights.
- e) Concession rights granted in accordance with legislation or contract, including concession rights to excavate, search, extract and exploit natural resources.

2) The term "Investor" shall mean any natural or legal person, having the citizenship of one of the Contracting Parties, who invests in the territory of the other Contracting Party.

- a) The term "natural person" shall apply to individuals.
- b) The term "legal person" shall apply to entities recognized as such in accordance with the legislation of a Contracting Party, such as associations, small businesses, companies and institutions, including merged institutions.

3) The term "Returns" shall mean net amounts yielded by investments in accordance with the laws in force in the host state and in particular, though not exclusively, shall mean profits, interests, capital gains and dividends from fees and royalties.

(4) The term "Territory" shall mean with respect to the Republic of Sudan the territories under its sovereignty, including the territorial waters, the continental shelf, the exclusive economic zone as well as other territories which it has sovereignty or jurisdiction over, in conformity with international law.

With respect to the Arab Republic of Egypt it shall mean the territories under its sovereignty, including the territorial waters,

the continental shelf, the exclusive economic zone as well as other territories which it has sovereignty or jurisdiction over, in conformity with international law.

Article 2. Promotion and Protection of Investments

1) Each Contracting Party shall in its territory encourage investment made by investors of the other Contracting Party and create suitable conditions for them, and shall accept such investments according to the applicable laws and regulations of that Contracting Party.

(2) Each Contracting Party shall in its territory protect investments made by investors of the other Contracting Party and shall ensure that the maintenance, use and disposition of such investments shall not be hampered or impaired by unfair or discriminatory measures.

(3) The Contracting Parties shall consult periodically in order to identify investment opportunities and sectors for either of them in the territory of the other, to achieve their mutual benefit.

Article 3. Treatment of Investments

1) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall receive fair and equitable treatment and not less favorable than that it accords to investments made by investors of any third state.

2) Each Contracting Party shall not subject investments made by the other Contracting Party to treatment less favorable than that it accords to its own nationals.

3) The above-mentioned treatment shall not apply to any benefits granted to third party investors by either Contracting Party by virtue of membership in a customs union, common market, free trade area, regional or sub-regional economic organization, multilateral international economic agreement or by virtue of an agreement between a Contracting Party and a third state on the avoidance of double taxation or mutual frontier trade arrangements.

Article 4. Expropriation

1) Investments made by investors of a Contracting Party shall not be subjected to nationalization or expropriation measures or to any other measure having a similar effect in the territory of the other Contracting Party, except for reasons of public interest and under due process of law, without discrimination and against adequate and prompt compensation. Such compensation shall be calculated according to the actual value of the expropriated investment at the time of expropriation.

2) Such compensation shall be equivalent to the actual or expected value of the expropriated investment at the time of expropriation or nationalization. It shall be calculated justly according to a prior economic situation in respect to any threat of expropriation or nationalization. The compensation shall be made without delay and shall be freely transferable. Any delay in the payment of such compensation shall result in a delay fine amounting to the sum of the commercial rate at the date of payment.

Article 5. Compensation for Losses

In the event that investments or proceeds of investments of one Contracting Party suffer damage in the territory of the other Contracting Party owing to armed conflict, state of emergency or other similar circumstances, the latter Contracting Party shall accord such investments treatment no less favorable than that it accords to its own nationals or to investors of any third state in regards to restitution, compensation or other measures. Amounts due under this Article shall be paid adequately and promptly.

Article 6. Transfers

1) Each Contracting Party shall guarantee investors of the other party the transfer revenues resulting from and related to investments, which include, but are not limited to, the following:

- a) Invested capital, capital increases and profits.
- b) Funds in repayment for loans and services related to investment.
- c) Income from investment

- d) Sums resulting from the total or partial liquidation of investments.
 - e) Compensation as set forth in Articles 4 and 5.
 - f) Salaries, wages and bonuses of nationals of one Party which they receive in the territory of the other Party through work permits related to investment and in accordance with the laws and regulations in force.
- 2) Transfers shall be made in a convertible foreign currency, using simplified procedures, and without delay.

Article 7. Subrogation

If either Contracting Party or its agency grants a guarantee against non-commercial risks in respect of an investment made by one of its own investors in the territory of the other Contracting Party, and funds are provided to such an investor under the guarantee, the other Contracting Party shall recognize the transfer of the rights of that investor to the first Contracting Party or its agency. The subrogated rights shall not exceed the original rights of the investor, and shall be enforced after said investor has exhausted all internal recourse in the host state.

Article 8. Settlement of Investment Disputes

- 1) Any dispute between a Contracting Party and an investor of the other Contracting Party shall be notified in writing by the investor to the host Contracting Party and include detailed information. The parties shall, whenever possible, settle these disputes amicably.
- 2) If the dispute cannot be settled amicably within six months from the date of notification of the dispute, the investor may submit the dispute to:
- a) The competent courts in the territory of the Contracting Party hosting the investment; or
 - b) The International Centre for Settlement of Investment Disputes (ICSID), in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States signed in Washington D.C. on 18th March, 1965, in the event that both Contracting Parties are a party to this Convention; or
 - c) An ad-hoc arbitration tribunal, established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- 3) The dispute shall be decided according to the following rules:
- a) The provisions of this Agreement.
 - b) The domestic law of the host state.
 - c) Rules of international law.
- 4) The award shall be final and binding on both parties to the dispute and enforceable in accordance with the domestic legislation of each Contracting Party.

Article 9. Settlement of Disputes between the Contracting Parties

- 1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through negotiation.
- 2) If the dispute between the Contracting Parties cannot be settled within six months from the commencement of negotiations, either Contracting Party may submit the dispute to an arbitration tribunal consisting of three members.
- 3) The arbitral tribunal shall be constituted as follows:

Each Contracting Party shall appoint one arbitrator. The two appointed arbitrators shall appoint the President of the tribunal, who shall be a national of a third state.

The arbitrators shall be appointed within three months and the President of the tribunal within five months of the date of notification by either Contracting Party to the other Contracting Party of the request to submit the dispute to arbitration.

- 4) If either Contracting Party fails, within the period specified in paragraph (3) of this Article, to appoint an arbitral tribunal, or if the two arbitrators fail to agree on the appointment of the President, the Parties shall request the President of the

International Court of Justice to make the appointment. If the President of the International Court of Justice is a national of either Contracting Party, or if they are otherwise prevented from performing said task, the Vice President of the International Court of Justice shall make the appointment.

If the Vice President is a national of either Contracting Party or if they are otherwise prevented from performing said task, the most senior member of the International Court of Justice shall make the appointment.

5) When considering a dispute, the arbitral tribunal shall apply the provisions of the present Agreement, as well as other agreements in force between the Contracting Parties and the rules of international law.

6) The tribunal shall decide by a majority of votes, and its decisions shall be binding and final. Each Contracting Party shall bear the cost of its own arbitrator and its representative, while the remaining costs shall be borne in equal parts by both Contracting Parties.

Article 10. Application of the Agreement

The provisions of this Agreement shall apply from the date of its entry into force. The Agreement shall apply for investments established in accordance with it, as well as for investments made before its entry into force, but shall not apply to any dispute concerning investment that has arisen prior to the entry into force.

Article 11. Amendment of the Agreement

Any amendment to this Agreement shall be proposed in writing and shall come into force after an exchange of notes by diplomatic channels. These amendments shall enter into force through the same procedures provided for in Article (12) of this Agreement.

Article 12. Entry Into Force of the Agreement

1) This Agreement shall enter into force on the date of exchange of written notifications by both Parties, through diplomatic channels, of the fulfilment of legal procedures necessary for its ratification. The Agreement shall enter into force on the date of the last notification.

2) This Agreement shall stay in force for a period of ten years, and shall continue to stay in force unless either Contracting Party requests, in writing, to terminate it, twelve months prior to the expiration of the Agreement.

3) With respect to investments made before the termination of this Agreement, the provisions of this Agreement shall remain in force for ten years from the date of termination.

Article 13. Termination

Upon entry into force of this Agreement, the Agreement on the Promotion and Protection of Investments between the Government of the Democratic Republic of Sudan and the Government of the Arab Republic of Egypt, signed on 28/05/1977, shall be terminated.

Done in duplicate in Khartoum on 17 Rabi'a Al-Thani, 1422 H.J, corresponding to 8 July, 2001, in the Arabic language, both texts being equally authentic.

For the Government of the of the Arab Republic of Egypt

For the Government of the of the Republic of Sudan