

# **AGREEMENT BETWEEN THE REPUBLIC OF ICELAND AND THE GOVERNMENT OF THE REPUBLIC OF UGANDA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

WHEREAS the Republic of Iceland and the Government of the Republic of Uganda (hereinafter referred to as the "Contracting Parties"), are desirous of developing economic co- operations for their mutual benefit, with the intention of creating and maintaining favourable conditions for investment of investors of one Contracting Party in the territory of the other Contracting Party,

AND WHEREAS the Contracting Parties are conscious that the promotion and reciprocal protection of investment in terms of this Agreement stimulates the business initiatives in this field.

THE CONTRACTING PARTIES HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the Purposes of this Agreement:

1. The term "investment" shall mean every kind of asset invested in connection with economic activities 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) movable and immovable property and derived rights, such as leases, mortgages, liens or pledges;
- b) shares, stocks and any other form of participation in a company;
- c) claims to money or to any performance under contract having a financial value associated with an investment or returns reinvested;
- d) intellectual property rights, which mean trade marks, patents, registered design rights, copyright, semiconductor topographies rights and plant varieties rights associated with an investment;
- e) any right conferred by laws or under contract and any licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or exploit natural resources.

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

2. The term "investor" shall mean, with regard to either Contracting Party, a natural person having the citizenship of that Contracting Party or permanently residing in the territory of that Contracting Party in accordance with its legislation and any legal person established in the territory of that Contracting Party in accordance with its legislation;

4. The term "territory" means the territory of each Contracting Party, as well as areas beyond the territory in which each Contracting Party may exercise sovereign rights or jurisdiction in accordance with international law;

5. The term "executive" means a natural person who primarily directs the management of an enterprise or establishes goals and policies for the enterprise or a major component or function of the enterprise, exercises wide latitude in decision-making and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the enterprise;

6. The term "manager" means a natural person who directs the management of an enterprise, or department, or subdivision of the enterprise, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire or fire or recommend hiring, firing or other personnel actions and exercises discretionary authority over day-to-day operations at a senior level; and

7. The term "specialist" means a natural person who possesses knowledge at an advanced level of expertise and who may be required to possess specific or proprietary knowledge of the enterprise's product, service, research equipment, techniques, or management.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its legislation.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall impede investors of the other Contracting Party by unreasonable or discriminatory measures in its territory as regards the management, maintenance, use, enjoyment or disposal of investments.

## **Article 3. National and Most-Favoured-Nation Treatment**

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments special rights accorded to nationals or investments of nationals of any third state by virtue of an agreement establishing a free-trade area, a customs union, a common market, a common labour market or a regional economic integration.

4. The provisions of paragraphs 1 and 2 of this Article shall not be applicable to tax measures. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party derived from any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of the latter shall prevail.

## **Article 4. Key Personnel**

1. Subject to the application of either Contracting Party's laws, regulations and procedures, either Contracting Party shall grant temporary entry, stay and authorisation to work and provide any necessary confirming documentation to a natural person of the other Contracting Party who is:

a) an investor who seeks to establish, develop, administer or provide advice or essential technical services to the operation of an enterprise in the territory of the other Contracting Party to which the investor has committed a substantial amount of capital, or

b) an employee employed by an enterprise referred to in a) above, or by an investor in a capacity of executive, manager or specialist who is essential to the enterprise;

so long as that person continues to meet the requirements of this Article.

2. Either Contracting Party shall grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraph 1 above. The spouse and minor children shall be admitted for the period of stay of that person.

3. Either Contracting Party shall grant authorisation to work to the spouse of the person who has been granted temporary entry, stay and authorisation to work in accordance with paragraph 1 above. The spouse shall retain the authorisation for the period of stay of that person.

4. Neither Contracting Party may deny entry and stay as provided for in paragraph 1 and paragraph 2, or authorisation to work as provided for in paragraph 1 and paragraph 3 of this Article, for reasons relating to labour market or other economic needs tests or numerical restrictions in national laws, regulations and procedures.

5. Neither Contracting Party may require that an enterprise of that Contracting Party that is an investment of an investor of the other Contracting Party appoints as executives, managers and members of boards of directors individuals of any

particular nationality.

## **Article 5. Compensation for Losses**

1. Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) requisitioning of their property by the forces or authorities of the latter Contracting Party, or

b) destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in a freely convertible currency without delay.

## **Article 6. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party in which territory the investment has been made, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

## **Article 7. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

a) the initial capital and additional amounts to maintain or increase the investment;

b) profits, interest, dividends and other current income or returns;

c) payments made under a contract including a loan agreement;

d) royalties or fees;

e) proceeds of sale or liquidation of all or part of the investment;

f) the earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

g) payments of compensation under Article 5 and Article 6 and payments of arbitral awards under Article 11.

2. For the purpose of this Agreement, exchange rate shall be the prevailing market rate for current transactions at the date of transfer, unless otherwise agreed.

3. Transfers shall be considered to have been made "without any undue delay" in the sense of paragraph 1 of this Article when they have been made within the period normally necessary for the completion of the transfer.

4. In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily restrict

transfers provided that such a Contracting Party implements measures or a programme in accordance with internationally recognized standards. These restrictions should be imposed on an equitable, non-discriminatory and in good faith basis.

## **Article 8. Applicable Laws**

1. Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2. Notwithstanding paragraph 1 of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

## **Article 9. Transparency**

Either Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application which may affect the operation of this Agreement.

## **Article 10. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investor under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor of that Contracting Party in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,
- b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

## **Article 11. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled, the investor shall be entitled to submit the case, at his choice, for settlement to:

- a) the competent court or administrative tribunal of the Contracting Party which is the party to the dispute; or
- b) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event that both Contracting Parties shall have become a party to this Convention; or
- c) to the Additional Facility Rules of ICSID, if either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party of the ICSID Convention; or
- d) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation of the disputing Contracting Party.

## **Article 12. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or negotiations.

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be constituted for each individual case in the following way: Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"), The Chairman shall be appointed within three months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the necessary appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

### **Article 13. Application of other Rules and Special Commitments**

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investor who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.
2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

### **Article 14. Essential Security Interests**

Nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfil its obligations with respect to the maintenance of international peace or security or the protection of its essential security interests.

### **Article 15. Applicability of this Agreement**

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

### **Article 16. Entry Into Force, Duration and Termination**

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.
2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate this Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE in duplicate at Reykjavik, this 17 day of September 2008, in the Icelandic and English languages, all texts being equally authentic.

In case of any divergence of interpretation the English text shall prevail.

For the Republic of Iceland

For the Government of the Republic of Uganda