

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF UGANDA AND THE GOVERNMENT OF THE REPUBLIC OF ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Uganda and the Government of the Republic of hereinafter referred to as the Contracting Parties,

DESIRING to strengthen their economic cooperation by creating favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party,

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Contracting Parties:

CONVINCED that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows.

Article 1. Definitions for the Purpose of this Agreement:

1. The term "Investment" means every kind of assets, such as goods, rights and interests of whatever nature, and in particular though not exclusively:

- a) tangible, intangible, movable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights ;
- b) shares, premium on share and other kinds of interest including minority or indirect forms, in companies constituted in the territory of one Contracting Party ;
- c) title to money or debentures, or title to any legitimate performance having an economic value ;
- d) intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models and mock-ups, technical processes, know- how, trade-names and goodwill, and any other similar rights ;
- e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in the maritime area of the Contracting Parties.

It is understood that those investments are investments which have already been made or may be made subsequent to the entering into force of this Agreement, in accordance with the legislation of the Contracting Party on the territory or in the maritime area of which the investment is made.

Any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party on the territory or in the maritime area of which the investment is made.

2. The term "nationals" means physical persons possessing the nationality of either Contracting Party.

3. The term "company" means any legal person constituted on the territory of one Contracting Party in accordance with the legislation of that Party and having its head office on the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party or by legal persons having their head office in the territory of one contracting Party and constituted in accordance with the legislation of that Party.

4. The term "returns" means all amounts produced by an investment, such as profits, royalties and interest, during a given period.

Investment returns and, in case of re-investment, re-investment returns shall enjoy the same protection as the investment.

5. The term "territory" shall mean a) in the case of Uganda, The Republic of Uganda. b) in the case of the Republic of i

6. This Agreement shall apply to the territory of each Contracting Party, as well as the maritime area of each Contracting Party, hereafter defined as the economic zone and the continental shelf outwards the territorial sea of each Contracting Party over which they have in accordance with International Law sovereign rights and a jurisdiction with a view to prospecting, exploiting and preserving natural resources.

7. Nothing in this agreement shall be construed to prevent any contracting party from taking any measure to regulate investment of foreign companies and the conditions of activities of these companies in the framework of policies designed to preserve and promote cultural and linguistic diversity.

Article 2. Promotion and Admission of Investments

Each Contracting Party shall promote, encourage and admit on its territory and in its maritime area, in accordance with its legislation and with the provisions of this Agreement, investments made by nationals or companies of the other Contracting Party.

Article 3. Fair and Equitable Treatment

Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. In particular though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any restriction to free movement, purchase and sale of goods and services, as well as any other measures that have a similar effect.

Within the framework of their internal legislation, the Contracting Parties shall favorably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made on the territory or in the maritime area of the other Contracting Party.

Article 4. National Treatment and Most Favored Nation Treatment

1 Each Contracting Party shall apply on its territory and in its maritime area to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, a treatment not less favorable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favored nation, if the latter is more favorable. In this respect, nationals authorized to work on the territory and in the maritime area of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities in accordance with the national labour laws.

This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

2 The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by the Double Taxation Treaty Convention between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 5. Dispossession and Indemnification

1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety on the territory and in the maritime area of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments on its territory and in its maritime area, except in the public interest and provided that these measures are neither discriminatory nor contrary to a specific commitment.

Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned and shall be set in accordance with the normal economic situation prevailing prior to any threat of dispossession.

The said compensation, the amounts and conditions of payment, shall be set not later than the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable. Until the date of payment, it shall bear interest calculated at the appropriate market rate of interest.

3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favorable than that granted to its own nationals or companies or to those of the most favored nation.

Article 6. Free Transfer

Each Contracting Party, on the territory or in the maritime area of which the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of:

- a) interest, dividends, profits and other current income ;
- b) royalties deriving from incorporeal rights as defined in Article 1, Paragraph 1, letters (d) and (e) ;
- c) repayments of loans which have been regularly contracted ;
- d) value of partial or total liquidation or disposition of the investment, including capital gains on the capital invested ;
- e) compensation for dispossession or loss described in Article 5, Paragraphs 2 and 3. The nationals of either Contracting Party, who have been authorized to work on the territory or in the maritime area of the other Contracting Party, as the result of an approved investment, shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer.

In case of a serious balance of payments difficulties and external financial difficulties or the threat thereof, each contracting party may temporarily restrict transfers, provided that this restriction:

- i) shall be promptly notified to the other party ;
- ii) shall be consistent with the articles of agreement with the International Monetary Fund;
- iii) shall be within an agreed period ;
- iv) would be imposed in an equitable, non discriminatory and in good faith basis

Article 7. Settlement of Disputes between an Investor and a Contracting Party

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party shall be notified in writing by the first party to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

As far as possible, the Parties shall endeavour to settle the dispute through negotiations, if necessary by seeking expert advice from a third party, or by conciliation between the Contracting Parties through diplomatic channels.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute or by conciliation through diplomatic channels within six months from the notification, the dispute shall be submitted, at the option of the investor, either to the competent jurisdiction of the State where the investment was made, or to international arbitration.

To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such consent implies that both Parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

3. In case of international arbitration, the dispute shall be submitted for settlement by arbitration to one of the hereinafter mentioned organizations, at the option of the investor:

- an ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on

International Trade Law (U.N.C.L.T.R.A.L.) ;

- the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965, when each State party to this Agreement has become a party to the said Convention.

As long as this requirement is not met, each Contracting Party agrees that the dispute shall be submitted to arbitration pursuant to the Rules of the Additional Facility of the I.C.S.I.D.

- the Arbitral Court of the International Chamber of Commerce in Paris; - an Arbitration Institution of their choice.

If the arbitration procedure has been introduced upon the initiative of a Contracting Party, this Party shall request the investor involved in writing to designate the arbitration organization to which the dispute shall be referred.

4. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 9 of this Agreement.

5. The arbitral tribunal shall decide on the basis of the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made, as well as on the basis of the provisions of this Agreement, of the terms of the specific agreement which may have been entered into regarding the investment, and of the principles of international law.

6. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

Article 8. Application of other Provisions

Where a matter is governed both by this agreement and by an other International Agreement to which both Contracting Parties are signatories, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

Article 9. Guarantee and Subrogation

1. In the event that the regulations of one Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded, after examining case by case, to investments made by nationals or companies of this Party on the territory or in the maritime area of the other Party.

2. Investments made by nationals or companies of one Contracting Party on the territory or in the maritime area of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously agreed to by the other Party.

3. If one Contracting Party, as a result of a guarantee given for an investment made on the territory or in the maritime area of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Party has in this case full rights of subrogation with regard to the rights and actions of the said national or company.

4. The said payments shall not affect the rights of the beneficiary of the guarantee to recourse to the ICSID or to continue proceedings submitted to it until completion of the proceedings.

Article 10. Special Agreements

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement and by those of the specific agreement.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-a-vis investors of the other Contracting Party shall be observed

Article 11. Settlement of Disputes between Contracting Parties

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. In the absence of a settlement through diplomatic channels, the dispute shall be submitted to a joint commission consisting of representatives of the two Parties; this commission shall convene without undue delay at the request of the first party to take action.

3. If the joint commission cannot settle the dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows for each individual case:

Each Contracting Party shall appoint one arbitrator within a period of two months from the date on which either Contracting Party has informed the other Party of its intention to submit the dispute to arbitration. Within a period of two months following their appointment, these two arbitrators shall appoint by mutual agreement a national of a third State as chairman of the arbitration court.

If these time limits have not been complied with, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointment(s).

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which one of the Contracting Parties has no diplomatic relations or if, for any other reason, he cannot exercise this function, the Vice-President of the International Court of Justice shall be requested to make the appointment(s).

4. The court thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of the votes; they shall be final and binding on the Contracting Parties.

5. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

Article 12. Previous Investments

(1) This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations. It shall, however, not be applicable to claims arising out of disputes which occurred prior to its entry into force.

Article 13. Laws

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 14. Amendments

The terms of this agreement may be amended by mutual agreement of both contracting parties and such amendments shall be effected by exchange of notes between them through diplomatic channels.

Article 15. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification by the Contracting Parties. The Agreement shall remain in force for a period of 20 years.

Unless notice of termination is given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by notification given 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 this Agreement shall be covered by this Agreement for a period of ten years from the date of termination.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at, on, in three original copies, each in the English and languages, all texts being equally authentic. The text

in the English language shall prevail in case of difference of interpretation.