Agreement between the Government of the Republic of Belarus and the Government of the Republic of Sudan on the promotion and reciprocal protection of investments

The Government of the Republic of Belarus and the Government of the Republic of Sudan (hereinafter referred to as the "Contracting Parties"),

GUIDED by the principle of the sovereign equality of States,

DESIRING to intensify economic cooperation to the mutual benefit of both States,

INTENDING to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

CONSCIOUS that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

HAVE AGREED as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" shall comprise 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 laws and regulations of the latter and shall include, in particular, though not exclusively:

a) movable and immovable property as well as any other property

rights such as mortgages, liens, pledges, and similar rights;

b) shares, stocks and debentures of companies or any other form of participation in a company;

c) claims to money or te any performance having an economic value associated with an investment;

d) intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names.and.goodwill associated with an investment;

e) any right conferred by law or under contract and any licenses and permits pursuant to law, 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 provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

2. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

b) The term "legal person" shall mean with respect to either ; Contracting Party:

- any entity incorporated or constituted in accordance with, and recognized as legal person by its laws;

- any body of persons having no legal personality but considered as a company by its laws.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes

profits, capital gains, shares, dividends, royalties or fees.

4, The term "territory" shall mean in respect of each Contracting Party the territory under its sovereignty and the sea and submarine areas over which the Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

5. The term "laws and regulations" in respect of the either Contracting Party means the laws and regulations of the State of the Contracting Party concerned.

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 laws and regulations.

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 in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. NATIONAL TREATMENT 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 not less favourable than that which it accords to investments and returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

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 not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

3. The provisions of paragraph 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 the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a} any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party;

b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. COMPENSATION FOR LOSSES

1. When investments by 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, they 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 its forces or authorities,

b) destruction-of their property-by-its-forces or authorities which was not caused in combat action or was not required by the necessity of the situation shall be accorded 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 freely convertible currency without delay.

Article 5. 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 against payment of prompt, adequate and effective compensation. Such compensation shall amount to the market (real) value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, whichever is the earlier and shall include compensation return from the date of expropriation until the date of payment in accordance with the laws and regulations of the State of the Contracting Party concerned. Such compensation return shall be not less than rate established at the London Interbank Market (LIBOR). The compensation shall be made without delay in the currency in which investment has been made, shall be effectively realizable and freely transferable.

2, The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case.and.of the valuation-ef his or-its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares.

Article 6. TRANSFERS

1. The Contracting Parties shall guarantee to the investors of the other Contracting Party, after they have fulfilled all their fiscal obligations, the tree transfer of payments relating to their investments, particularly, though not exclusively:

a) returns as defined in paragraph 2, Article 1 of this Agreement;

b) capital and additional amounts necessary for the maintenance or development of the investment;

c) funds in repayment of loans;

d) proceeds from the sale or partial or total liquidation of the investment, including possible increment values;

e) compensation under Articles 4 and 5 of this Agreement;

f) earnings of natural persons who have been authorized to work in the territory of the other Contracting Party in connection with investment.

2. The transfers mentioned in this Article shall be made without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party from which territory the transfer is made.

Article 7. SUBROGATION

1, If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment 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, 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 8. 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 in the dispute.

2. Tf any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months from the date of request for settlement, the investor shall be entitled to submit the case for settlement either to:

a) the competent court of the Contracting Party in the territory of which the investment has been made; or

b). the. International Center 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 both Contracting Parties shall have become a party to this Convention; or

c) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission of 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.

3. During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not allege as a defense its sovereignty or the fact that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or a part of his losses.

Article 9. 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 consultation or negotiation through diplomatic channels.

2. If the dispute cannot be thus settled within six months after the beginning of consultation or negotiation, 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 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 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. 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 unless otherwise is determined by the Tribunal. The Arbitral Tribunal shall determine its.own procedure.

Article 10. 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 beth Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

2.1f 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 the Agreement, the more favourable shall be accorded.

Article 11. APPLICABILITY OF THIS AGREEMENT

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after the entry into force of this Agreement.

Article 12. APPLICATION TO THE CONSTITUTIONS OF THE STATES OF THE CONTRACTING PARTIES

Nothing in this Agreement shall derogate from the Constitutions of the States of the Contracting Parties.

Article 13. CONSULTATIONS

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time toe be agreed upon through diplomatic channels.

Article 14.. ENTRY INTO FORCE, DURATION AND TERMINATION

1. Each of the Contracting Parties shall notify the other in writing of the completion of the internal procedures required by its law for enter into force of this Agreement. This Agreement shall enter into force on the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the 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 representatives, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Khartoum this 17" day of January 2017 in the Russian and English languages, each text being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE REPUBLIC OF BELARUS

FOR THE GOVERNMENT OF SUDAN