

AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ERITREA AND THE GOVERNMENT OF THE REPUBLIC OF UGANDA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the State of Eritrea and the Government of the Republic of Uganda (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for greater investment by nationals of one Contracting Party in the territory of the other Contracting Party; and

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:

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement –

(1) The term "competent authority" means, in the case of the State of Eritrea, the Minister responsible for Trade and Industry, and in the case of Republic of Uganda, the Minister responsible for Finance.

(2) The term "investment" means every kind of asset and shall include in particular, but not exclusively:

(a) Tangible and intangible, movable and immovable property, as well as any other rights such as leases, mortgages, usufruct, liens or pledges; privileges, guarantees and any other similar rights;

(b) A company or business enterprise, or shares, stock or other forms of participation in a company or business enterprises and bonds and a debt of a company or business enterprises;

(c) Claims to money or other assets or to any performance having an economic value including re-invested capital and capital gains, and any increase in value.

(d) Industrial and intellectual property rights, including copyrights, patents, trade-names, utility-model patents, registered designs, trade-marks, trade and business secrets, technology, know-how, and goodwill, and any other similar rights;

(e) Concessions, or other rights conferred by law or under contract, including any concessions to search for, cultivate, extract or exploit natural resources;

(3) A change in the form in which the assets are invested does not affect their character as investments.

(4) "Returns" means the amount yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gain, dividend, royalty payments, an arrangement, technical assistance or other fees.

(5) The term "investor" shall mean any natural or legal person of one of the Contracting Party investing in the territory of the other Contracting Party.

(6) The term "natural person" in reference to either Contracting Party, shall mean any natural person holding the nationality of that state in accordance with its laws.

(7) The term "legal person" in reference to either Contracting Party, shall mean any entity legally established in the territory of that Contracting Party in conformity with its laws and regulations in force and which has its seat and real economic activities in the territory of that Contracting Party such as public institutions, corporations, partnerships etc regardless of the

legal form of that entity.

(8) The term "nationals" shall comprise with regard to either Contracting Party:-

(a) Natural persons having the nationality of that Contracting Party,

(b) Legal persons constituted under the law of that Contracting Party,

(9) The term "laws" includes legislation as well as administrative rules and regulations which are officially published.

(10) "territory" means

(a) In the case of the State of Eritrea, the term "territory" shall mean in addition to the zones contained within land boundaries, economic zones, the maritime zones comprising the marine and sub marine zones over which the State of Eritrea exercises sovereignty or jurisdiction rights under the laws applicable in the State of Eritrea in accordance with international law.

(b) In the case of Uganda means the Republic of Uganda.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall allow investments by investors of the other Contracting Party in accordance with its laws and encourage and create favourable conditions for such investments, including facilitating the establishment of representative offices.

(2) Investments of investors of each Contracting Party shall at all times 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 approved investments of investors of the other Contracting Party approved in its territory.

(3) 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. Treatment of Investment

(1) Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investors.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

(3) With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third state who are in the same circumstances, whichever is more favourable to the nationals concerned, for this purpose however, any special fiscal advantages accorded by that party, shall not be taken into account:-

(a) Under an agreement for the avoidance of double taxation,

(b) By virtue of its participation in a customs union, economic union or similar institutions.

Article 4. Expropriation

(1) Investments of each Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and against prompt, adequate and effective compensation.

(2) Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment. The fair

market value shall include but not exclusively the net asset value thereof as certified by an independent firm of auditors.

(3) Compensation shall be paid promptly and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(4) The expropriated investor shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of the Contracting Party, of its case, of the value of investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.

(5) When a Contracting Party expropriates the assets of a Company or an enterprise in its territory, which is incorporated or constituted under its law, and in which investors of other Contracting Party have an investment, including shareholding, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the fair market value of such investment resulting from the expropriation.

Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor. Such a compensation shall be settled in freely convertible currency.

(2) Without prejudice to paragraph 1 of this Article, an investor of a Contracting Party who, in any of the situations referred to in that section, suffers a loss in the area of another Contracting Party resulting from:

(a) Requisitioning of its investment or part thereof by the latter's forces or authorities, or

(b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective

Article 6. Transfer of Capital and Returns (repatriation)

(1) Each Contracting Party shall, with respect to investments in its territory by investors of the other Contracting Party, allow the free transfer into and out of its territory of:

(a) The initial capital and any additional capital for the maintenance and development of an investment,

(b) The proceeds from the sale or liquidation of all or any part of an investment;

(c) Profits, capital gains, dividends, royalties, interests and other returns realised

(d) Payments made for the reimbursement of the credits for investment, and interest due in accordance with laws and regulations of the contracting parties.

(e) Payments derived from rights enumerated in Article 1 paragraph (1)(iv) of this agreement,

(f) An appropriate proportion of the earnings and other remunerations of personnel engaged from abroad in connection with an investment;

(g) Compensation, restitution, indemnification or other settlement pursuant to Articles 5 and 6 of this Agreement.

(2) The transfers referred to under paragraph 6(1) of this Agreement shall be effected at the prevailing market rate in freely convertible currency on the date of transfer. In the absence of such a market rate, the official published rate of exchange used for conversion of currencies into Special Drawing Rights shall apply. Transfers shall be effected without delay.

Article 7. Subrogation

(1) In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of any indemnity it has given in respect of an investment or any part thereof makes payment to its own nationals and business enterprises in respect of any of their claims under this Agreement, the Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and business enterprises. The subrogated right or claim shall not be greater than the original

right or claim of the said investor.

(2) Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and business enterprises shall not affect the right of such national and business enterprises to make their claims against the other Contracting Party in accordance with Article 9 provided that the exercise of such a right does not overlap, or is not in conflict, with the exercise of a right by virtue of subrogation under paragraph (1).

Article 8. Disputes between a Contracting Party and an Investor

1) Any dispute which may arise between one of the contracting parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation shall be settled amicably as far as possible.

2) In the absence of settling the dispute amicably within six months from the date of a written application for settlement, the investor in question may submit the dispute for settlement to:-

(a) The competent court of the host Contracting Party having territorial jurisdiction,

(b) An ad hoc arbitration tribunal in accordance with the arbitration rules of the UN Commission on International Trade Law (UNCITRAL) i. The international arbitral tribunal mentioned above shall be especially constituted in the following manner. Each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairperson. The arbitrators shall be appointed within two months and the Chairperson within four months from the date on which one party concerned notified the other party of its submission of the dispute to arbitration.

ii. The arbitral tribunal shall, apart from what is stated below, determine its own arbitral procedures with reference to the UNCITRAL Rules.

iii. The tribunal shall reach its decision by a majority of votes.

iv. The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.

v. The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.

vi. Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

vii. The Contracting Parties shall agree on the place of arbitration.

viii. The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 10 where a dispute concerns the interpretation or application of this Agreement;

Or

(c) The International Center for the Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the convention on the settlement of investment disputes between states and nationals of other states opened for signature at Washington on 18 March 1965:

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations.

(2) If such a dispute cannot be settled within six months from the beginning of the dispute, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators: one appointed by each Contracting Party, and the third, who shall be the Chairperson of the tribunal, appointed by agreement of the Contracting Parties.

(3) Within two months of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) If within any periods specified the necessary appointments have not been made either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or

arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority may be invited to make the necessary appointments and so on.

(5) The tribunal shall reach its decision by a majority of votes.

(6) The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

(7) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairperson and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

(8) Apart from the above, the tribunal shall establish its own rules of procedure.

Article 10. Relations between Governments

The provisions of this agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the contracting parties.

Article 11. Applicability of this Agreement

(1) This Agreement shall only apply -

(a) In respect of the investments in the territory of the State of Eritrea to all investments made by nationals and business enterprises of the Republic of Uganda which are specifically approved in writing by the competent authority designated by the Government of the State of Eritrea and upon such conditions, if any, as it shall deem fit.

(b) In respect of investments in the territory of the Republic of Uganda, to all investments made by nationals and business enterprises of the State of Eritrea which are specifically approved in writing by the competent authority designated by the Government of the Republic of Uganda upon such conditions, if any, as it shall deem fit;

(2) The provisions of the foregoing paragraph shall apply to all investments made by nationals and business enterprises of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 12. 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 13. Application of other Provisions

(1) Where a matter is governed both by this agreement and by another international agreement to which both contracting parties are signatories, the most favorable provisions shall be applied to the contracting parties and to their investors.

(2) Whenever the treatment accorded by one Contracting Party to investors of the other Contracting Party according to its laws and regulations or other provisions or specific contract or investment agreement is more favorable than that provided under this agreement, the most favorable treatment shall apply to that specific case.

Article 14. Prohibitions and Restrictions

(1) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that is considered appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

(2) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting measures or maintaining measures, including environmental measures:

(a) Necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) Necessary to protect human, animal or plant life or health; or

(c) Relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

(3) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) The protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and

(c) Ensuring the integrity and stability of a Contracting Party's financial system.

Article 15. 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 16. Entry Into Force, Duration and Termination

(1) Each Contracting Party shall notify the other Contracting Party of its internal legal procedures required for the bringing into force of this Agreement and the fulfilment thereof. This Agreement shall enter into force on the 30th day from the date of the notification of the later Contracting Party.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of nine years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) 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 duly authorised representatives of their respective Governments have signed this Agreement.

Done in duplicate at on, 2001 in the English Language.

For the Government of the State of Eritrea

For the Government of the Republic of Uganda