

# **A G R E E M E N T THE REPUBLIC OF UGANDA, on the one hand, A N D BETWEEN THE BELGO-LUXEMBURG ECONOMIC UNION, on the other hand, ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of The Republic of Uganda on the one hand,

And

The Government of the Kingdom of Belgium,

Acting both in its own name and in the name

Of the Government of the Grand-Duchy of Luxemburg,

By virtue of existing agreements,

The Walloon Government,

The Flemish Government,

And the Government of the Region of Brussels-Capital, on the other hand

(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:

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement,

1. The term "investors" shall mean:

a) The "nationals", i.e. any natural person who, according to the legislation of the Republic of Uganda, of the Kingdom of Belgium, or of the Grand-Duchy of Luxemburg is considered as a citizen of the of the Republic of Uganda, of the Kingdom of Belgium, or of the Grand-Duchy of Luxemburg, respectively;

b) The "companies", i.e. any legal person constituted in accordance with the legislation of the the Republic of Uganda, of the Kingdom of Belgium, or of the Grand-Duchy of Luxemburg and having its registered office in the territory of the Republic of Uganda, the Kingdom of Belgium, or the Grand-Duchy of Luxemburg respectively.

2. The term "investments" shall mean every kind of assets and every direct or indirect contribution in cash, in kind or in services, invested or reinvested in every sector of economic activity.

The following shall more particularly, though not exclusively, be considered as investments for the purpose of this Agreement:

a) Tangible and intangible, movable and immovable property as well as any other rights in rem, such as mortgages, liens,

pledges, usufruct and similar rights;

b) A company or business enterprise, shares, stock or other forms of participation in a company or business enterprise, corporate rights and any other kind of shareholdings, including minority or indirect ones, in companies constituted in the territory of one Contracting Party;

c) Bonds, claims to money and to any performance having an economic value;

d) Copyrights, industrial and intellectual property rights, patents, trade names, utility-model patents, goodwill and any other similar rights;

e) Concessions granted under public law or under contract, including concessions to explore, develop, extract or exploit natural resources.

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement.

3. The term "returns" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees.

4. The term "territory" shall mean

a) In the case of Uganda, The Republic of Uganda.

b) In the case of the Belgo-Luxemburg Economic Union, the territory of the Kingdom of Belgium, to the territory of the Grand-Duchy of Luxemburg as well as to the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters of the States concerned and upon which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

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

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. In particular, each Contracting Party shall authorize the conclusion and the fulfilment of licence contracts and commercial, administrative or technical assistance agreements, as far as these activities are in connection with such investments.

## **Article 3. Protection of Investments**

1. All investments, whether direct or indirect, made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.

2. Except for measures required to maintain public order, such investments shall enjoy continuous protection and security, i.e. excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.

## **Article 4. National Treatment and Most Favoured Nation**

1 In all matters relating to the treatment of investments the investors of each Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Party.

2 With respect to the operation, management, maintenance, use, enjoyment and sale or other disposal of investments, each Contracting Party shall accord, on its territory, to investors of the other Contracting Party, treatment no less favourable than that granted to its own investors or to investors of any other State if the latter is more favourable.

3 The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and business enterprises of any third state shall not be construed so as to oblige one Contracting Party to extend to the nationals and business enterprises of the other Contracting Party the benefit of any treatment, preference or privilege resulting from -

(a) Membership of any existing or future regional economic integration organisation or Customs Union of which one of the Contracting Parties is or may become a member, or

(b) Any arrangement with a third state or states in the same geographical region designed to promote regional co-operation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

4 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. Double Taxation Treaty Convention between the two Contracting Parties and the domestic laws of each Contracting Party.

## **Article 5. Deprivation and Limitation of Ownership**

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 actual value of the investments on the day before the measures were taken or became public.

3 Such compensation shall be paid without delay in any convertible currency and shall be freely transferable. It shall bear interest at the normal commercial rate from the date of the determination of its amount until the date of its payment.

4 Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to the investors of the most favoured nation.

5. In respect of matters dealt with in this Article, each Contracting Party shall grant to the investors of the other Contracting Party a treatment which shall at least be equal to that granted in its territory to the investors of the most favoured nation. This treatment shall in no case be less favourable than that recognized under international law.

## **Article 6. Transfers**

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments relating to an investment, without undue delay, including more particularly:

a) Amounts necessary for establishing, maintaining or expanding the investment;

b) Amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licences, franchises, concessions and other similar rights, as well as salaries of expatriate personnel;

c) The invested capital or proceeds from the sale or liquidation of all or any part of an investment;

d) Compensation paid pursuant to Article 5.

2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin.

3. Transfers shall be made in a freely convertible currency at the rate applicable on the day transfers are made to spot transactions in the currency used.

4. The guarantees referred to in this Article shall at least be equal to those granted to the investors of the most favoured nation.

## **Article 7. Subrogation**

1. If one Contracting Party or any public institution of this Party pays compensation to its own investors pursuant to a guarantee providing coverage for an investment, the other Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated into the rights of the investors.

2. As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated into the rights of the indemnified investors the obligations of the latter under law or contract.

## **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. Specific 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-à-vis investors of the other Contracting Party shall be observed.

## **Article 10. Settlement of Investment Disputes**

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.I.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;
- the Arbitration Institute of the Chamber of Commerce in Stockholm.

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 7 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 11. Disputes between the Contracting Parties Relating to the Interpretation or**

## **Application of this Agreement**

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 ten 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 the present Agreement.

DONE at ....., on ....., in three original copies, each in the English, French and Dutch languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE GOVERNMENT OF THE REPUBLIC OF UGANDA FOR THE BELGO-LUXEMBURG ECONOMIC UNION For the Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg: For the Walloon Government: For the Flemish Government: For the Government of the Region of Brussels-Capital