

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF UGANDA**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN**

**ON THE RECIPROCAL PROMOTION AND**

**PROTECTION OF INVESTMENTS**

The Government of the Republic of Uganda and the Government of the Republic of the Sudan (hereinafter referred to as the Contracting Parties).

**DESIRING** to strengthen their traditional ties of friendship and to extend and intensify the economic relation between them and in particular to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party.

**RECOGNIZING** the need to protect investments by investors of the Contracting Parties and to simulate flow of investments and individual business initiative with the view of promoting the economic prosperity of the contracting parties.

**AWARE** of the need to establish an adequate juridical framework which settle and guarantee promotion and reciprocal protection of investments between the Contracting Parties.

**HAVE AGREED** as follows:

## **Article 1**

### **Definitions**

For the purpose of this Agreement

1) The term “competent authority” means, in the case of the Republic of Uganda, the Minister responsible for Finance, and in the case of the Republic of Sudan, the Sudanese Investment Authority.

2) “Investment” means every kind of asset investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter, and in particular, though not exclusively, includes :

- (i) tangible and intangible, Movable and immovable property and other rights such as mortgages, leases, usufruct, liens, privileges, guarantees or pledges;
- (ii) Shares, bonds, debts, stocks and debentures of companies or interests in the property of such companies.

Returns reinvested, claims to money and claims to performance (iii)  
pursuant to economic value;

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

- (v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.
- 3) A change in the form in which assets or capitals have been invested or reinvested shall not affect their designation as “investments” for the purpose of this Agreement.
- 4) “Investor” means
- Natural person having the nationality of that Contracting Party (i)
  - Legal person constituted or otherwise duly organized under the laws of that contracting Party and have their seat and economic activities in the territory of that same contracting Party . (ii)
- 5) “Returns” means amounts yielded by investments such as profits, dividends, capital gains, payments, an arrangement, technical assistance, royalties or other fees .
- 6) “Territory” means:
- (i) in the case of the Republic of Sudan, the territory where it exercises sovereign rights or jurisdiction in accordance with its legislation and international law.
  - (ii) in the case of of Uganda, the Republic of Uganda.

## **Article 2**

### **Promotion and Protection of Investment**

Each Contracting Party shall allow investments by investors of the other (1) 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 investments in its territory of the other Contracting Party approved

(3) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of other Contracting Party.

## **Article 3**

### **Treatment of Investment**

Each contracting Party shall in its territory accord to investments made by (1). 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 most favourable from the point of view of the investors.

Each Contracting Party shall in its territory accord investors of the other (2). 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.

#### **Article 4**

#### **Exceptions**

(1) 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 -

membership of any existing or future regional economic integration (a)

organisation or Customs Union of which one of the Contracting

Parties is or may become a member, or

any arrangement with a third state or states in the same geographical (b)

region designed to promote regional co-operation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

(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**

## **Expropriation and Nationalisation**

Investments of each Contracting Party shall not be nationalised, expropriated (1) 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.

Such compensation shall amount to the fair market value of the investment (2) 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.

Compensation shall be paid promptly and and in case late payment, the cost (3) of capital shall be accordingly ameliorated.

### **Article 6**

#### **Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the (1) other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state or 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, if any, 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.

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:

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

destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation (b)

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective

## Article 7

### Transfers of Investment and Returns

Each Contracting Party shall, subject to its laws and regulation, allow without unreasonable delay the transfer of payment in connection with investments and return in any freely convertible currency. Such transfers include in particular though not exclusively:

- a. Profits, dividends, royalties and other legitimate income.
- b. Amounts from total or partial liquidation of the investments.
- c. Payment pursuant to a loan agreement in connection with investment:
- d. Payment of technical assistance or technical service fee, management fee:
- e. Earnings of natural person of the other Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.



The transfer referred to under sub article (1) of this Article shall be made in 2. freely convertible currency at the prevailing exchange rate of the Contracting Party in whose territory the investment was made on the date of transfer.

## **Article 8**

### **Subrogation**

If Contracting Party or its designated Agency makes a payment of any of its 1. investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its designated agency to such right or claim. 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 9**

### **Settlement of Disputes between a Contracting Party and an Investor**

(1) Subject to paragraph (3) any dispute between a national or company of one contracting Party and the other Contracting Party in connection with an investment

in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to initiate judicial action before the competent court of the Contracting Party accepting the investment.

If a dispute involving the amount of compensation resulting from (3) expropriation, nationalisation, or other measures having effect equivalent to nationalisation or expropriation, mentioned in Article 5 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national or business enterprise concerned, it may be submitted to an international arbitral tribunal established by both parties. The provisions of this paragraph shall not apply if the national or business enterprise concerned has resorted to the procedure specified in paragraph (2) of this Article.

The international arbitral tribunal mentioned above shall be especially (4) constituted in the following manner. Each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairman. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which one party concerned notified the other party of its submission of the dispute to arbitration.

The arbitral tribunal shall, apart from what is stated below, determine its (5) own arbitral procedures with reference to the UNCTRAL Rules.

The tribunal shall reach its decision by a majority of votes. (6)

The decision of the arbitral tribunal shall be final and binding and the (7) parties shall abide by and comply with the terms of its award.

The arbitral tribunal shall state the basis of its decision and state reasons (8)  
upon the request of either party.

Each party concerned shall bear the cost of its own arbitrator and its (9)  
representation in the arbitral proceedings. The cost of the Chairman in discharging  
tribunal shall be borne equally his arbitral function and the remaining costs of the  
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.

The Contracting Parties shall agree on the place of arbitration. (10)

The provisions of this Article shall not prejudice the Contracting Parties (11)  
from using the procedures specified in Article 10 where a dispute concerns the  
interpretation or application of this Agreement.

## **Article 10**

### **Settlement of Disputes between Contracting Parties**

Disputes between the Contracting Parties concerning the interpretation or 1.  
application of this Agreement shall, as far as possible, be settled by consultation  
through diplomatic channel.

If a dispute can not thus be settled within six months, it shall, upon the 2.  
request of either Contracting Party, be submitted to an ad hoc arbitral tribunal of  
three members.

Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one Arbitrator of the Tribunal. Those two arbitrators shall, within two months, select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third Arbitrator shall within two months, be appointed by the two Contracting Parties as Chairman of the Arbitration Tribunal. 3.

If both arbitrators can not reach an agreement concerning the choice of the Chairman within two months after their appointment, either Contracting Party may in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointment, if the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall to make the necessary appointment. 4.

5. The Arbitral Tribunal shall determine its own procedure, The tribunal shall reach its award by a majority of votes in accordance with the provisions of this Agreement and the principles of international law recognized by both contracting parties. Such award shall be final and binding on both Contracting parties.

Each Contracting party shall be the cost of its appointed arbitrator and its representation in arbitral proceeding. The cost of chairman and the remaining costs shall be borne in equal parts by the contracting parties. 6.

## **Article 11**

### **Applicability of this Agreement**

This Agreement shall only apply - (1)

- in respect of investments in the territory of the Republic of Uganda, to all investments made by nationals and business enterprises of the Republic of Sudan 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; (a)
- in respect of the investments in the territory of the Republic of Sudan, 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 Republic of Sudan and upon such conditions, if any, as it shall deem fit. (b)

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. It shall, however, not be applicable to claims arising out of disputes which occurred prior to its entry into force. (2)

## **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**

Where a matter is governed both by this agreement and by another 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 14

### Prohibitions and Restrictions

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

provided that such measures are not applied in an arbitrary or unjustifiable (2) 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 inconsistent with the provisions of this Agreement; maintaining measures, including environmental measures:

necessary to ensure compliance with laws and regulations that are (a) 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.

Nothing in this Agreement shall be construed to prevent a Contracting Party (3) from adopting or maintaining reasonable measures for prudential reasons, such as: the protection of investors, depositors, financial market participants, (a) policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution; the maintenance of the safety, soundness, integrity or financial (b) responsibility of financial institutions; and ensuring the integrity and stability of a Contracting Party's financial (c) 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. This Agreement shall enter into force thirty (30) days after the date on which the Governments of the Contracting Parties have notified each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The date shall refer to the date on which the last notification letter is sent. It shall remain in force for a period of ten (10) years and shall continue in force, unless terminated in accordance with paragraph (2) of this article.
2. Either Contracting Party may by giving one (1) years written notice to the other Contracting Party, terminate this Agreement at the expiration of the initial ten (10) year period or any time thereafter.
3. With respect to investment made or acquired prior to the date of termination of this Agreement, the provisions of all the other articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

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

Done in duplicate at, \_\_\_\_\_, Day of \_\_\_\_\_ in 2001 in the English language, both texts begin equally authentic.

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For the Government of  
Republic of Uganda

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For the Government of the  
the Republic of the Sudan