

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT**

The Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of the Sudan (herein after 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 stimulate the flow of investments and individual business initiative with the view of promoting the economic prosperity of the Contracting Parties.

HAVE AGREED as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

- a) "Investment" means every kind of asset invested by 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) Movable and immovable and any other rights such as mortgages, liens or pledges;
- (ii) Shares, stocks and debentures of companies or interests in the property of such companies;
- (iii) Claims to money or to other assets or any performance having an economic value,
- (iv) Intellectual and industrial property rights, including rights with respect to copy rights, patents, trade marks, trade names, industrial designs, trade secrets, technical processes and know-how and goodwill;
- (v) Business concessions conferred by Law or under contract, including concessions to search for, cultivate, extract or exploit natural resource;
- 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.
- b) "Investor" means: (i) Natural person having the nationality of that Contracting Party,
- (ii) Legal person constituted or otherwise duly organized under the laws of the Contracting Party and have their seat and economic activities in the territory of that same Contracting Party.
- (iii) Legal person not constituted under the laws of the Contracting Party but fully controlled or owned directly by natural persons as defined in (i).
- c) "Returns" means the amounts yielded by investments such as profits, dividends, interest, capital gains, royalties or other fees.
- d) "Territory" means; (i) With respect to the Federal Democratic Republic of Ethiopia, the territory in which the Federal Democratic Republic of Ethiopia exercises sovereign rights or jurisdiction in accordance with its legislation and international law.
- (ii) With respect to the Republic of the Sudan, land areas of the Sudan, adjacent territorial waters including the continental

shelf over which the Sudan has sovereignty and air space above such land areas in accordance with its legislation and international law.

## **Article 2. Promotion and Admission**

1. Each Contracting Party shall encourage and create favorable conditions for Investors of the other Contracting Party to invest in its territory and admit such investments in accordance with its laws and regulations.
2. Once an investment is admitted, each Contracting Party in accordance with its laws and regulations, grant the necessary permit in connection with such an investment.

## **Article 3. Protection and Treatment**

1. Investments made in accordance with the laws and regulations of each Contracting Party by Investors of the other Contracting Party shall enjoy full protection in the territory of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such an investment,
2. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of the other Investors of the other Contracting Party and shall not be less favourable than that accorded to investments made by its own Investors or Investors of any third states.
3. If the legislation of either Contracting Party entitles the investment of the Investors of the other Contracting Party to treatment more favorable than is provided for by this Agreement, such legislation shall, to the extent that it is more favourable, prevail over this Agreement.
4. The treatment and protection as mentioned in paragraph 1 and 2 of this article shall not be construed so as to oblige a Contracting Party to extend to the Investors and investments of the other Contracting Party the benefits of any treatment, preference or privilege resulting from any existing or future customs or economic union, a free trade area, or regional economic cooperation to which either of the Contracting Parties is or may become a member. Nor shall such treatment relate to any advantage which either Contracting Party accords to Investors of a third state by virtue of a Double Taxation Exemption Agreement or other reciprocal agreement regarding tax matters.

## **Article 4. Expropriation and Nationalization**

Neither Contracting Party shall take any measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of Investors of the other Contracting Party unless the following conditions are complied with:

- (a) The measures are taken for public purpose or interest and under due process of law;
- (b) The measures are non-discriminator; and
- (c) The measures are taken against prompt, adequate and effective compensation.

Such compensation shall amount to the market value of the investments affected immediately before the measures of expropriation or nationalization are taken or became public knowledge, and it shall be freely transferable in a freely convertible currency from the Contracting Party. Any unreasonable delay in payment of compensation shall carry on interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

## **Article 5. Compensation for Losses**

Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, revolution, a state of national emergency, insurrection, or riot 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 national or to Investors of any third state.

## **Article 6. Transfer of Investment and Returns**

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the transfer of payments in connection with investments and returns in any freely convertible currency. Such transfers include:

- a) Profits, dividends, interest, royalties and other legitimate income;
- b) Amounts from total or partial liquidation or proceeds of sale of investments;
- c) Payments pursuant to a loan agreement in connection with investments;
- d) Payment of technical assistance or technical service fee, management fee;
- e) Earnings of natural persons 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;
- f) Payments effected under article 5.

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

## **Article 7. Subrogation**

If a Contracting Party or its designated Agency makes a payment to any of its 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.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.
2. If a dispute cannot thus settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal of three members.
3. 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. If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other party to make such an appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment. 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 be appointed by the two Contracting Parties as Chairman of the Arbitration Tribunal.
4. If both arbitrators can't reach an agreement concerning the choice of the Chairman within two months after their appointment, either Contracting Party may in the absence of any 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 be invited to make the necessary appointment.
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.
6. Each Contracting Party shall bear the cost of its appointed arbitrator and its representation in arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes which might arise between one of the Contracting Parties and an Investor of the other Contracting Party concerning an investment of that Investor in the territory of the former Contracting Party shall, whenever possible, be settled amicably between the parties concerned.
2. If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, the dispute shall at the request of the Investor concerned be submitted for settlement 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) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of the other states, opened for signature, at Washington, on March 18, 1965, if both Contracting Parties are members of this Convention; or
  - c) The International Center for Settlement of Investment Disputes under the Rules Governing Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility Rules) if one of the Contracting Parties is not a Contracting State of the Convention as mentioned in Paragraph 2(b) of this Article; or
  - d) An international ad hoc arbitral which, unless and otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. The arbitral awards shall be final and binding on both parties to the dispute and shall be executed according to the international laws of the Contracting Party.
  4. Each Contracting Party hereby consents to submit investment disputes for resolution to the alternative dispute settlement mechanisms and shall be executed in accordance with the preceding paragraphs.

## **Article 10. Scope of Application**

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws and regulations by Investors of the other Contracting Party prior to or after the entry 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.

## **Article 11. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty (30) days after the later date on which the Government 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 later 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 be extended for another ten (10) years unless it is terminated in accordance with paragraph 2 of this Article.
2. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the expiration of the initial ten (10) years 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 THEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Khartoum, on this 7th day of March 2000 in two originals in the English language, both texts being equally authentic.

For the Government of the Federal Democratic Republic of Ethiopia

For the Government of the Republic of the Sudan