

AGREEMENT BETWEEN THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND THE KINGDOM OF DENMARK CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Kingdom of Denmark and the Federal Democratic Republic of Ethiopia, hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for investments in both States and to intensify the co-operation between private enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

1. 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, liens, 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 enterprise and bonds and debt of a company or business enterprise,
- c) Returns reinvested, claims to money and claims to performance pursuant to contracts having an economic value,
- d) Industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and any other similar rights,
- e) Concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

2. The term »returns« means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees.

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.

3. The term »investor« means with respect to each Contracting Party:

- a) Natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws.
- b) Legal persons, such as companies, firms, associations, development finance institutions, or foundations, constituted or otherwise duly organised under the laws of that Contracting Party and having a seat and economic activities in the territory of that same Contracting Party.

4. The term »territory« means:

- a) With respect to the Kingdom of Denmark the territory under its sovereignty as well as maritime zones and continental shelf over which the Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

b) 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.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its law and encourage 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 investors of the other Contracting Party.
3. Each Contracting Party shall observe any commitment it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

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 investor.
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.

Article 4. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of each Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors 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 party, or
- b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation and Compensation

1. Investments of investors 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 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 (hereinafter referred to as the »valuation date«).
3. Such market value shall be calculated in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the valuation date. 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 investor affected 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 that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.

Article 6. Compensation for Losses

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.

Article 7. Transfer of Capital and Returns

1. Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, and shall include in particular, though not exclusively:

- a) The initial capital and any additional capital for the maintenance and development of an investment;
- b) The invested capital or the proceeds from the sale or liquidation of all or any part of an investment;
- c) Interest, dividends, profits and other returns realised;
- d) Payments made for the reimbursement of the credits for investments, and interest due;
- e) Payments derived from rights enumerated in Article 1, paragraph 1, (d), of this Agreement;(d), of this Agreement;
- f) Unspent earnings and other remuneration of personnel engaged from abroad in connection with an investment;
- g) Compensation, restitution, indemnification or other settlement pursuant to Articles 5 and 6.Articles 5 and 6.

2. Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

3. Transfers shall be made pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made in conformity with paragraph 1 and 2 of this Article.paragraph 1 and 2 of this Article.

Article 8. Subrogation

1. If one Contracting Party or its designated agency makes a 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 recognise:

- 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 to its designated agency and
- 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.

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

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, the dispute may be submitted to the courts of the Contracting Party or to international arbitration if the investor concerned so wishes.

Where the dispute is referred to international arbitration, parties in the dispute may agree to refer the dispute either to:

- a) The International Centre for Settlement of Investment Disputes (ICSID) established pursuant to the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention; or
- b) The International Centre for Settlement of Investment Disputes under the rules governing the 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 above of this; or

c) An international ad hoc tribunal which, unless 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). The appointing authority under the said rules shall be the Secretary General of ICSID.

3. For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.

4. Any arbitration under paragraph 2 b) – c) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention). paragraph 2 b) – c) of this Article shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

5. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal. paragraph 1 of this Article cannot be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted on an ad hoc basis as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman to be appointed by the two Contracting Parties. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal and the chairman shall be appointed within two (2) months following the appointment of the two arbitrators.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision on the basis of the present Agreement and applicable rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11. Consultations

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergences, claims, or disputes which have arisen prior to its entry into force.

Article 13. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

Article 14. Territorial Extension

1. This Agreement shall not apply to the Faroe Islands and Greenland.
2. The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 15. Entry Into Force

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of that last notification.

Article 16. Duration and Termination

1. This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until 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 the date of notification.
2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from that date. Articles 1 to 12 shall remain in force for a further period of ten years from that date.

DONE in duplicate at Addis Abeba on April 24, 2001 in the Danish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

For the Kingdom of Denmark Mogens Lykketoft

For the Federal Democratic Republic of Ethiopia Ato Seyoum Mesfin