

# **AGREEMENT BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA ON INVESTMENT COOPERATION AND FACILITATION**

The Federative Republic of Brazil and the Federal Democratic Republic of Ethiopia

(Hereinafter jointly referred to as the "Contracting Parties" and separately as "Contracting Party"),

Wishing to strengthen and to enhance the bonds of friendship and the spirit of continuous cooperation between the Contracting Parties;

Seeking to create and maintain favourable conditions for the investments of investors of a Contracting Party in the territory of the other Contracting Party;

Seeking to stimulate, streamline and support bilateral investments, thus opening new integration opportunities between the Contracting Parties;

Recognizing the essential role of investment in promoting sustainable development, economic growth, poverty reduction, job creation, expansion of productive capacity and human development;

Considering that the establishment of a strategic partnership between the Contracting Parties in the area of investment will bring wide-ranging and mutual benefits;

Recognizing the importance of fostering a transparent and friendly environment for investments by investors of the Contracting Parties;

Reassuring their regulatory autonomy and policy space;

Wishing to encourage and strengthen contacts between the private sectors and the Governments of the two countries; and

Seeking to create a mechanism for technical dialogue and foster government initiatives that may contribute to a significant increase in mutual investment;

Agree, in good faith, to conclude the following Agreement on Investment Cooperation and Facilitation, hereinafter referred to as "the Agreement":

## **Section I. Scope of the Agreement and Definitions**

### **Article 1. Definitions**

1. For the purpose of this Agreement:

1.1 "Enterprise" means: any entity constituted or organized under applicable law, for profit, whether privately owned or State-owned, including any corporation, trust, partnership, sole proprietorship, joint venture;

1.2 "Host State" means the Contracting Party where the investment is made.

1.3 "Investment" means a direct investment of an investor of one Contracting Party, established or acquired in accordance with the laws and regulations of the other Contracting Party, that, directly or indirectly, allows the investor to exert control or significant degree of influence over the management of the production of goods or provision of services in the territory of the other Contracting Party, including but not limited to:

a) An enterprise;

b) Shares, stocks, participations and other equity types in an enterprise;

- c) Movable or immovable property and other property rights such as mortgages, liens, pledges, encumbrances or similar rights and obligations;
- d) Concessions, licenses or authorizations granted by the Host State to the investor of the other Contracting Party;
- e) Loans and debt instruments to a company;
- f) Intellectual property rights such as trademarks, trade names, trade secrets, copyrights, know-how, goodwill associated with an investment, industrial designs and technical processes to the extent they are recognized under the law of the Host State and international agreements to which the Contracting Parties are parties.

1.3.1 For the purposes of this Agreement and for greater certainty, "Investment" does not include:

- a) An order or judgment issued as a result of a law suit or an administrative process;
- b) Debt securities issued by a Contracting Party or loans granted from a Contracting Party to the other Contracting Party, bonds, debentures, loans or other debt instruments of a State-owned enterprise of a Contracting Party that constitutes public debt under the legislation of that Contracting Party;
- c) Portfolio investments, i.e., those that do not allow the investor to exert a significant degree of influence in the management of the company; and
- d) Claims to money that arise solely from commercial contracts for the sale of goods or services by an investor in the territory of a Contracting Party to a national or an enterprise in the territory of another Contracting Party, or the extension of credit in connection with a commercial transaction, or any other claims to money that do not involve the kind of interests set out in sub-paragraphs (a)-(f) of Article 1.3.

1.4 "Investor" means:

- a) Any natural person who is a national or a permanent resident of a Contracting Party, according to its laws, that makes an investment in the territory of the other Contracting Party;
- b) Any legal person established and organized in accordance with the laws of a Contracting Party, that has its domicile and substantial business activities in the territory of that Contracting Party and that invests in the territory of the other Party; and
- c) Any legal person established in accordance with the laws of a third party and whose property or effective control belongs, directly or indirectly, to investors of one of the Contracting Parties, according to sub-paragraphs (a)-(b) above.

1.5 "Returns" means the values obtained by an investment, including profits, interests, capital gains, dividends or "royalties".

1.6 "Measure" means any measure adopted by a Contracting Party, whether in the form of law, regulation, rule, procedure, decision, administrative ruling, or any other form.

1.7 "Territory" means:

- a) In respect of the Federal Democratic Republic of Ethiopia: the territory of the Federal Democratic Republic of Ethiopia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.
- b) In respect of the Federative Republic of Brazil the territory, including its land and aerial spaces, the exclusive economic zone, territorial sea, seabed and subsoil within which Brazil exercises its sovereign rights or jurisdiction, in accordance with international law and its internal legislation.

## **Article 2. Objective**

The objective of this Agreement is to promote cooperation between the Contracting Parties in order to facilitate and encourage mutual investment, through the establishment of an institutional framework for the management of an agenda for further investment cooperation and facilitation, as well as through mechanisms for risk mitigation and prevention of disputes, among other instruments mutually agreed on by the Contracting Parties.

## **Article 3. Scope and Coverage**

1. This Agreement shall apply to all investments made before or after its entry into force.
2. This Agreement shall not limit the rights and benefits, which an investor of a Contracting Party enjoys under national or

international law in the territory of the other Contracting Party.

3. This Agreement shall not prevent the adoption and implementation of new legal requirements or restrictions to investors and their investments, as long as they are consistent with this Agreement.

4. This Agreement applies only to investments once admitted in accordance with domestic laws, regulations and policies.

5. The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force; but shall not apply to claims arising out of events which occurred, or to any claims which had been settled, or to any government measures which were taken, prior to its entry into force.

6. This Agreement does not apply to government measures relating to taxation in accordance with Article 11 — (Tax Measures)

## **Section II. Regulatory Measures and Risk Mitigation**

### **Article 4. Admission and Treatment**

1. Each Contracting Party shall admit and encourage investments of investors of the other Contracting Party, according to their respective laws and regulations.

2. Each Contracting Party shall grant to investments and investors of the other Contracting Party treatment according to the due process of law.

3. In line with the principles of this Agreement, each Contracting Party shall ensure that all measures that affect investment are administered in a reasonable, objective and impartial manner, in accordance with their respective laws and regulations.

### **Article 5. National Treatment**

1. Without prejudice to the measures in force under its legislation on the date of entry into force of this Agreement, each Contracting Party shall accord to investors of another Contracting Party and their investments treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. For greater certainty, whether treatment is accorded in 'like circumstances' depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

3. Notwithstanding any other provision of this Agreement, the provisions of this Article shall not apply to concessions, advantages, exemptions or other measures that may result from:

a) A bilateral investment treaty or free trade Agreement that entered into force prior to this Agreement; or

b) Any multilateral or regional Agreement relating to investment or economic integration in which a Contracting Party is participating or may participate.

4. For greater certainty, this Article shall not be construed to require any Contracting Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the investor or investments.

### **Article 6. Most-favoured Nation Treatment**

1. Each Contracting Party shall accord to investors of another Contracting Party and their investments treatment no less favourable than that it accords, in like circumstances, to investors of any third State with respect to the expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. This Article shall not be construed to require a Contracting Party to grant to an investor of another Contracting Party or their investments the benefit of any treatment, preference or privilege arising from:

a) Provisions relating to investment dispute settlement contained in an investment agreement or an investment chapter of a commercial agreement; or

b) Any existing or future customs, economic or monetary union, a common market or a free trade area or similar economic

integration agreement to which either of the Contracting Parties is or may become a party;

c) A bilateral investment treaty or free trade agreement that entered into force prior to this agreement; or

3. For greater certainty, whether treatment is accorded in 'like circumstances' depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

## **Article 7. Expropriation**

1. Each Contracting Party shall not directly nationalize or expropriate investments of investors of the other Contracting Party, except:

a) For a public purpose or necessity or when justified by a social interest;

b) In a non-discriminatory manner;

c) On payment of effective compensation, according to paragraphs 2 to 4; and

d) In accordance with due process of law.

2. The compensation shall:

a) Be paid without undue delay;

b) Be equivalent to the fair market value of the expropriated investment, immediately before the expropriating measure has taken place ("expropriation date");

c) Not reflect any change in the market value due to the knowledge of the intention to expropriate, before the expropriation date; and

d) Be completely payable and transferable, according to Article 10 - Transfers;

3. The compensation to be paid shall not be less than fair market value on the expropriation date, plus interests at commercial rate from the date of expropriation until the date of payment, according to the legislation of the Host State.

4. The Contracting Parties shall cooperate to improve the mutual knowledge of their respective national legislations regarding investment expropriation.

5. For greater certainty, this Article only provides for direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or ownership rights.

## **Article 8. Compensation for Losses**

1. The investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war or other armed conflict, revolution, state of emergency, insurrection, riot or any other similar events, shall enjoy, with regard to restitution, indemnity, compensation, or other form of settlement, the same treatment as the latter Contracting Party accords to its own investors or the treatment accorded to investors of a third party, whichever is more favourable to the affected investor.

2. Each Contracting Party shall provide the investor restitution, compensation, or both, as appropriate, in accordance with Article 6 of this Agreement, in the event that investments suffer losses in its territory in any situation referred to in paragraph 1 resulting from:

a) Requisitioning of its investment or part thereof by the forces or authorities of the latter Contracting Party; or

b) Destruction of its investment or any part thereof by the forces or authorities of the latter Contracting Party.

## **Article 9. Transparency**

1. Each Contracting Party shall ensure that its laws, regulations, procedures and general administrative resolutions related to any matter covered by this Agreement, in particular regarding qualification, licensing and certification, are published without undue delay and, when possible, in electronic format, as to allow interested persons of the other Contracting Party to be aware of such information. 2. Each Contracting Party shall endeavour to allow reasonable opportunity to those

stakeholders interested in expressing their opinions on investment-related measures that the Contracting Party intends to adopt. 3. Whenever possible, each Contracting Party shall make available this Agreement to their respective public and private financial agents, responsible for the technical evaluation of risks and the approval of loans, credits, guarantees and related insurances for investment in the territory of the other Contracting Party.

## **Article 10. Transfers**

1. Each Contracting Party shall allow that the transfer of funds related to an investment be made freely and without undue delay, to and from their territory. Such transfers include:

- a) The initial capital contribution or any addition thereof in relation to the maintenance or expansion of such investment;
- b) Returns directly related to the investment;
- c) The proceeds of sale or total or partial liquidation of the investment;
- d) The repayments of any loan, including interests thereon, relating directly to the investment;
- e) The amount of compensation.

2. Without prejudice to paragraph 1, a Contracting Party may, in an equitable and non-discriminatory manner and in good faith, prevent a transfer if such transfer is prevented under its laws relating to:

- a) Bankruptcy, insolvency or the protection of the rights of creditors;
- b) Criminal or penal offences and the recovery of the proceeds of crime;
- c) Financial reports or maintenance of transfers' registers when necessary to cooperate with law enforcement or with financial regulators;
- d) The guarantee for the enforcement of decisions in judicial or administrative proceedings;
- e) The formalities required to register and satisfy the Central Bank and other relevant authorities of a Contracting Party.

3. Nothing in this Agreement shall affect the right of a Contracting Party to adopt regulatory measures concerning the balance of payments in a balance of payments crisis, nor will it affect the rights and obligations of the Contracting Parties as members of the International Monetary Fund contained in the Agreement of the International Monetary Fund, in particular exchange measures which are in conformity with the Agreement of the International Monetary Fund.

4. The adoption of temporary restrictive measures for transfers in case of the existence of serious balance of payments difficulties must be non-discriminatory and in accordance with the Articles of the Agreement of the International Monetary Fund.

## **Article 11. Tax Measures**

1. No provision of this Agreement shall be interpreted as an obligation of one Contracting Party to give to an investor from the other Contracting Party, concerning his or her investments, the benefit of any treatment, preference or privilege arising out of any Agreement to avoid double taxation, current or future, of which a Contracting Party to this Agreement is a party or becomes a party.

2. No provision of this Agreement shall be interpreted in a manner that prevents the adoption or implementation of any measure aimed at ensuring the equitable or effective imposition or collection of taxes, according to the Contracting Parties' respective laws and regulations, so long as such a measure is not applied as to constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction.

## **Article 12. Prudential Measures**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining prudential measures, 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.

2. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of circumventing the commitments or obligations of the Contracting Party under this Agreement.

## **Article 13. Security Measures**

Nothing in this Agreement shall be construed to prevent a Contracting Party from:

1. Adopting or maintaining measures aimed at preserving its national security or public order, or to apply the provisions of their criminal laws or comply with its obligations regarding the maintenance of international peace and security in accordance with the provisions of the United Nations Charter.

2. Measures adopted by a Contracting Party under paragraph 1 of this Article or the decision based on national security laws or public order that at any time prohibit or restrict the realization of an investment in its territory by an investor of another Contracting Party shall not be subject to the dispute settlement mechanism under this Agreement.

## **Article 14. Corporate Social Responsibility**

1. Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the principles and standards set out in this Article and the OECD Guidelines for Multinational Enterprises (MNEs) as may be applicable on the State Parties.

2. Investors and their investment shall endeavour to comply with the following principles and standards for a responsible business conduct and consistent with the laws adopted by the Host State:

a) Contribute to the economic, social and environmental progress, aiming at achieving sustainable development;

b) Respect the internationally recognized human rights of those involved in the investors' activities;

c) Encourage local capacity building through close cooperation with the local community;

d) Encourage the creation of human capital, especially by creating employment opportunities and offering professional training to workers;

e) Refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues;

f) Support and advocate for good corporate governance principles, and develop and apply good practices of corporate governance;

g) Develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the investment and the societies in which its operations are conducted;

h) Promote the knowledge of and the adherence to, by workers, the corporate policy, through appropriate dissemination of this policy, including programs for professional training;

i) Refrain from discriminatory or disciplinary action against employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or corporate policy;

j) Encourage, whenever possible, business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided for in this Article; and

k) Refrain from any undue interference in local political activities.

## **Article 15. Investment Measures and Combating Corruption and Illegality**

1. Each Contracting Party shall adopt measures and make efforts to prevent and fight corruption, money laundering and terrorism financing with regard to matters covered by this Agreement, in accordance with its laws and regulations.

2. Nothing in this Agreement shall require any Contracting Party to protect investments made with capital or assets of illicit origin or investments in the establishment or operation of which illegal acts have been demonstrated to occur and for which national legislation provides asset forfeiture.

## **Article 16. Provisions on Investment and Environment, Labor Affairs and Health**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure it deems appropriate to ensure that investment activity in its territory is undertaken in a manner according to labor, environmental and health legislations of that Contracting Party, provided that this measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction.

2. The Contracting Parties recognize that it is inappropriate to encourage investment by lowering the standards of their labor and environmental legislation or measures of health. Therefore, each Contracting Party guarantees it shall not amend or repeal, nor offer the amendment or repeal of such legislation to encourage the establishment, maintenance or expansion of an investment in its territory, to the extent that such amendment or repeal involves decreasing their labor, environmental or health standards. If a Contracting Party considers that another Contracting Party has offered such an encouragement, the Contracting Parties will address the issue through consultations.

## **Section III. Institutional Governance and Dispute Prevention**

### **Article 17. Joint Committee for the Administration of the Agreement**

1. For the purpose of this Agreement, the Contracting Parties hereby establish a Joint Committee for the administration of this Agreement (hereinafter referred as "Joint Committee").

2. This Joint Committee shall be composed of government representatives of both Contracting Parties designated by their respective Governments.

3. The Joint Committee shall meet at such times, in such places and through such means as the Contracting Parties may agree. Meetings shall be held at least once a year, with alternating chairmanships between the Contracting Parties.

4. The Joint Committee shall have the following functions and responsibilities:

- a) Supervise the implementation and execution of this Agreement;
- b) Discuss and divulge opportunities for the expansion of mutual investment;
- c) Coordinate the implementation of the mutually agreed cooperation and facilitation agendas;
- d) Consult with the private sector and civil society, when applicable, on their views on specific issues related to the work of the Joint Committee;
- e) Seek to resolve any issues or disputes concerning investments of investors of a Contracting Party in an amicable manner; and
- f) Supplement the rules for arbitral dispute settlement between the Contracting Parties.

5. The Contracting Parties may establish ad hoc working groups, which shall meet jointly or separately from the Joint Committee.

6. The private sector may be invited to participate in the ad hoc working groups, whenever authorized by the Joint Committee.

7. The Joint Committee shall establish its own rules of procedure.

### **Article 18. National Focal Points or 'ombudsmen'**

1. Each Contracting Party shall designate a National Focal Point, or "Ombudsman", which shall have as its main responsibility providing support for investors from the other Contracting Party in its territory.

2. Each Contracting Party shall designate a single agency or authority as its National Focal Point.

a) In Brazil, the "Ombudsman"/National Focal Point shall be the "Ombudsman de Investimentos Diretos (OID)" within the Chamber of Foreign Trade — CAMEX.

b) In the Federal Democratic Republic of Ethiopia, the "Ombudsman"/National Focal Point shall be the Ethiopian Investment Commission (EIC).

3. The National Focal Point, among other responsibilities, shall:

- a) Endeavour to follow the recommendations of the Joint Committee and interact with the National Focal Point of the other Contracting Party, in accordance with this Agreement;
- b) Follow up in a timely manner on requests and enquiries of the other Contracting Party or of investors of the other Contracting Party with the competent authorities and inform the stakeholders on the results of its actions;
- c) Assess, in consultation with relevant government authorities, suggestions and complaints received from the other Contracting Party or investors of the other Contracting Party and recommend, as appropriate, actions to improve the investment environment;
- d) Seek to prevent differences in investment matters, in collaboration with government authorities and relevant private entities;
- e) Provide timely and useful information on regulatory issues on general investment or on specific projects; and
- f) Report its activities and actions to the Joint Committee, when appropriate.

4. Each Contracting Party shall determine time limits for the implementation of each of its functions and responsibilities, which will be communicated to the other Contracting Party.

5. The National Focal Points, or "Ombudsmen", shall cooperate with each other and with the Joint Committee with a view to helping in the prevention of disputes between the Contracting Parties.

## **Article 19. Exchange of Information between the Contracting Parties**

1. The Contracting Parties shall exchange information, whenever possible and relevant to reciprocal investments, concerning business opportunities, procedures, and requirements for investment, particularly through the Joint Committee and its National Focal Points.

2. For this purpose, the Contracting Party shall provide, when requested, in a timely fashion and with respect for the level of protection granted, information related, in particular, to the following items:

- a) Regulatory conditions for investment;
- b) Governmental programs and possible related incentives;
- c) Public policies and legal frameworks that may affect investment;
- d) Legal framework for investment, including legislation on the establishment of companies and joint ventures;
- e) Related international treaties;
- f) Customs procedures and tax regimes;
- g) Statistical information on the market for goods and services;
- h) Available infrastructure and public services;
- i) Governmental procurement and public concessions;
- j) Social and labor requirements;
- k) Immigration legislation;
- l) Currency exchange legislation;
- m) Information on legislation of specific economic sectors or segments previously identified by the Contracting Parties; and
- n) Regional projects and Agreements related to an investment.

3. The Contracting Parties shall also exchange information on Public-Private Partnerships (PPPs), especially through greater transparency and quick access to the information on the legislation.

## **Article 20. Treatment of Protected Information**



1. The Contracting Parties shall respect the level of protection of information provided by the submitting Contracting Party, according to the respective national legislations on the matter.
2. None of the provisions of the Agreement shall be construed to require any Contracting Party to disclose protected information, the disclosure of which would jeopardize law enforcement or otherwise be contrary to the public interest or would violate the privacy or harm legitimate business interests. For the purposes of this paragraph, protected information includes confidential business information or information considered privileged or protected from disclosure under the applicable laws of a Contracting Party.

## **Article 21. Interaction with the Private Sector**

Recognizing the key role played by the private sector, the Contracting Parties shall publicize, among the relevant business sectors, general information on investment, regulatory frameworks and business opportunities in the territory of the other Contracting Party.

## **Article 22. Cooperation between Agencies Responsible for Investment Promotion**

The Contracting Parties shall promote cooperation between their investment promotion agencies in order to facilitate investment in the territory of the other Contracting Party.

## **Article 23. Dispute Prevention Procedure**

1. If a Contracting Party considers that a specific measure adopted by the other Contracting Party constitutes a breach of this Agreement, it may invoke this Article to initiate a dispute prevention procedure within the Joint Committee.
2. The following rules apply to the aforementioned procedure:
  - a) To initiate the procedure, the interested Contracting Party shall submit a written request to the other Contracting Party, identifying the specific measure in question, and presenting the relevant allegations of fact and law. The Joint Committee shall meet within sixty (60) days from the date of the request;
  - b) The Joint Committee shall have sixty (60) days from the date of the first meeting, extendable by mutual agreement, to evaluate the submission presented and to prepare a report;
  - c) The report of the Joint Committee shall include:
    - i) Identification of the submitting Contracting Party;
    - ii) Description of the measure in question and the alleged breach of the Agreement; and
    - iii) Findings of the Joint Committee.
  - d) In the event that the dispute is not resolved upon the completion of the time frames set forth in this Article, or there is non-participation of a Contracting Party in the meetings of the Joint Committee convened according to this Article, the dispute may be submitted to arbitration by a Contracting Party in accordance with Article 24 of the Agreement.
3. If the measure in question pertains to a specific investor, the following additional rules shall apply:
  - a) The initial submission shall identify the affected investor;
  - b) Representatives of the affected investor may be invited to appear before the Joint Committee; and
  - c) A Contracting Party may refuse to discuss in the Dispute Prevention Procedure a question concerning an investment of a national of that Contracting Party in the territory of that Contracting Party.
4. Whenever relevant to the consideration of the measure in question, the Joint Committee may invite other interested stakeholders to appear before the Joint Committee and present their views on such measure.
5. The records of the meetings held under the Dispute Prevention Procedure and all other related documentation shall remain confidential, except for the report submitted by the Joint Committee under paragraph 2, subject to the law of each of the Contracting Parties regarding the disclosure of information.

## **Article 24. Settlement of Disputes between the Contracting Parties**

1. Once the procedure under paragraph 2 of Article 23 has been exhausted and the dispute has not been resolved, either Contracting Party may submit the dispute to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article. Alternatively, the Contracting Parties may choose, by mutual agreement, to submit the dispute to a permanent arbitration institution for settlement of investment disputes. Unless the Contracting Parties decide otherwise, such institution shall apply the provisions of this Article.

2. The purpose of the arbitration is to determine the conformity with this Agreement of a measure that a Contracting Party claims to be not in conformity with the Agreement.

3. The following may not be subject to arbitration: Article 13 - Security Exception, Article 14 Corporate Social Responsibility; Paragraph I of Article 15 — Investment Measures and Combating Corruption and Illegality; and paragraph 2 of Article 16 - Provisions on Investment and Environment, Labor Affairs and Health.

4. This Article shall not apply to any dispute if more than three (3) years have elapsed since the date on which the Contracting Party knew or should have known of the facts giving rise to the dispute.

5. The Arbitral Tribunal shall consist of three arbitrators. Each Contracting Party shall appoint, within three (3) months after receiving the "notice of arbitration", a member of the Arbitral Tribunal. Within three (3) months of the appointment of the second arbitrator, the two members shall appoint a national of a third State with which both Contracting Parties maintain diplomatic relations, who, upon approval by both Contracting Parties, shall be appointed chairperson of the Arbitral Tribunal. The appointment of the Chairperson must be approved by both Contracting Parties within one (1) month from the date of his/her nomination.

6. If, within the periods specified in paragraph 5 of this Article, the necessary appointments are not made; either Contracting Party may 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 one Contracting Party or is prevented from fulfilling the said function, the member of the International Court of Justice who has the most seniority who is not a national of a Contracting Party will be invited to make the necessary appointments.

7. Arbitrators must:

a) Have the necessary experience or expertise in Public International Law, international investment rules or international trade, or the resolution of disputes arising in relation to international investment agreements;

b) Be independent of and not be affiliated, directly or indirectly, with any of the Contracting Parties or with the other arbitrators or potential witnesses nor take instructions from the Contracting Parties; and

c) Comply with standard of conduct established by the Joint Committee;

8. The "Notice of Arbitration" and other documents relating to the resolution of the dispute shall be presented at the location to be designated by each Contracting Party. The Arbitral Tribunal shall determine its own procedure in accordance with this Article or, alternatively, the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The Arbitral Tribunal will render its decision by majority vote and decide on the basis of the provisions of this Agreement and the applicable principles and rules of international law as recognized by both Contracting Parties. Unless otherwise agreed, the decision of the Arbitral Tribunal shall be rendered within six (6) months following the appointment of the Chairperson in accordance with paragraphs 5 and 6 of this Article.

9. The decision of the Arbitral Tribunal shall be final and binding upon both Contracting Parties, who shall comply with it without delay.

10. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairperson and the remaining costs shall be borne in equal parts by both Contracting Parties, unless otherwise agreed. The arbitral tribunal shall have the power to determine its procedures.

11. Notwithstanding paragraph 2 of this Article, the Contracting Parties may, through a specific arbitration agreement, request the arbitrators to examine the existence of damages caused by the measure in question under the obligations of this Agreement and to establish compensation for such damages through an arbitration award. In this case, in addition to the provisions of the preceding paragraphs of this Article, the following shall be observed:

a) The arbitration agreement to examine the existence of damages shall be taken as "notice of arbitration" within the meaning of paragraph 8;

b) This paragraph shall not be applied to a dispute concerning a particular investor which has been previously resolved and where protection of res judicata applies. If an investor had submitted claims regarding the measure at issue in the Joint

Committee to local courts or an arbitration tribunal of the Host State, the arbitration to examine damages can only be initiated after the withdrawal of such claims by the investor in local courts or an arbitration tribunal of the Host State. If after the establishment of the arbitration, the existence of claims in local courts or arbitral tribunals over the contested measure is made known to the arbitrators or the Contracting Parties, the arbitration will be suspended.

c) If the arbitration award provides monetary compensation, the Contracting Party receiving such compensation shall transfer to the holders of the rights of the investment in question, after deducting the costs of the dispute in accordance with the internal procedures of each Contracting Party. The Contracting Party to whom restitution was granted may request the Arbitral Tribunal to order the transfer of the compensation directly to the holders of rights of the affected investment and the payment of costs to whoever has assumed them.

## **Section IV. Agenda for Further Investment Cooperation and Facilitation**

### **Article 25. Agenda for Further Investment Cooperation and Facilitation**

1. The Joint Committee shall develop and discuss an Agenda for Further Cooperation and Facilitation on relevant topics for the promotion and enhancement of bilateral investment. The issues to be initially discussed by the Contracting Parties will be agreed upon in the first meeting of the Joint Committee.
2. The agendas shall be discussed between the competent government authorities of both Contracting Parties. The Joint Committee shall invite, when applicable, additional competent government officials for both parties in the discussions of the agenda.
3. The results of such negotiations shall constitute additional protocols to this Agreement or specific legal instruments.
4. Joint Committee shall establish schedules for discussions of the Agenda for further Investment Cooperation and Facilitation, and if applicable, the negotiation of specific commitments.
5. The Contracting Parties shall submit to the Joint Committee the names of government bodies and its official representatives involved in these discussions.

## **Section V. General and Final Provisions**

### **Article 26. Preservation of Diplomatic Channels**

Neither the Joint Committee nor the Focal Points or Ombudsmen shall replace or impair, in any way, any other agreement or the diplomatic channels existing between the Contracting Parties.

### **Article 27. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of the constitutional procedure required for entry into force of this Agreement. This Agreement shall enter into force ninety (90) days after the date of the receipt of the second diplomatic note indicating that all necessary internal procedures with regard to the entry into force of international agreements have been completed by both Contracting Parties.
2. This Agreement shall remain in force for a period of ten (10) years and shall lapse thereafter unless the Contracting Parties expressly agree in writing that it shall be renewed for additional ten (10)-year period. On the last Joint Committee meeting immediately prior to the completion of such period and of any additional ten (10)-year period, the Contracting Parties shall discuss the matter.
3. Any Contracting Party may terminate this Agreement, at any time, by giving at least twelve (12) months prior written notice to the other Contracting Party.
4. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue in effect for a period of five (5) years from the date of termination.

### **Article 28. Amendment**

1. This Agreement may be amended by mutual consent of the Contracting Parties, provided that one of the Contracting Parties presents to the other Contracting Party a written proposal for amendment.

2. Amendments shall be made by written agreement and shall enter into force ninety (90) days after the date of the receipt of the second diplomatic note indicating that all necessary internal procedures with regard to the conclusion and the entering into force of international agreements have been completed by both Contracting Parties.

In witness whereof, the undersigned duly authorized by their respective governments have this Agreement.

Done at Addis Ababa, on the 11th day of April of 2018, in two originals in the Portuguese and English languages, both texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE FEDERATIVE REPUBLIC OF BRAZIL

H.E. Amb. Fernando José Marroni de Abreu

Undersecretary-General for Africa and the Middle East

FOR THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

H.E. Mrs. Hirut Zemene

State Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia

## **I. Agenda for further investment cooperation and facilitation**

The agenda listed below represents an initial effort to improve investment cooperation and facilitation between the Contracting Parties and may be expanded and modified at any time by the Joint Committee.

### **a. Payments and transfers**

i. The cooperation between the financial authorities shall aim at facilitating capital and currency remittances between the Contracting Parties.

### **b. Visas**

i. Each Contracting Party shall seek, whenever possible and convenient, to facilitate the free movement of managers, executives and skilled employees of economic agents, entities, businesses and investors of the other Contracting Party.

ii. While Respecting national legislation, immigration and labor authorities of each Contracting Party shall seek a common understanding in order to reduce time, requirements and costs to grant appropriate visas to investors of the other Contracting Party.

iii. The Contracting Parties will negotiate a mutually acceptable agreement to facilitate visas for investors with a view to extend its duration and stay.

### **c. Technical and environmental regulations**

i. Subject to their national legislation, the Contracting Parties shall establish expeditious, transparent and agile procedures for issuing documents, licenses and certificates related to the prompt establishment and maintenance of the investment of the other Contracting Party.

ii. Any query from the Contracting Parties, or from their economic agents and investors concerning commercial registration, technical requirements and environmental standards shall receive diligent and timely treatment from the other Contracting Party.

### **d. Cooperation on Regulation and Institutional Exchange**

i. The Contracting Parties shall promote institutional cooperation for the exchange of experiences on the development and management of regulatory frameworks.

ii. Contracting Parties hereby undertake to seek to promote technological, scientific and cultural cooperation through the implementation of actions, programs and projects for the exchange of knowledge and experience, in accordance with their mutual interests and development strategies.

iii. The Contracting Parties agree that access to technology should be promoted, whenever possible, and be aimed at contributing to mutual investment.

iv. The Contracting Parties shall seek to promote, foster, coordinate and implement cooperation in professional qualification through greater interaction between relevant national institutions.

vi. The Contracting Parties shall seek ways to promote greater integration of logistics and transports in order to open new air routes and increase, whenever possible and appropriate, their connections and maritime merchant fleets.

vii. The Joint Committee may identify other areas of mutual interest for cooperation in sectorial legislation and institutional exchange.