

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the Federal Democratic Republic of Ethiopia and the Government of the United Arab Emirates (hereinafter jointly referred to as the "Contracting Parties" and separately as a "Contracting Party");

RECOGNIZING that investment has a vital role in ensuring sustainable economic growth and development;

SEEKING to promote investment that contributes to the sustainable development of the Contracting Parties;

DESIRING to create conditions for greater investment by investors of either Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the mutual encouragement and promotion of such investments will be conducive to the stimulation of individual business initiative;

AIMING to ensure the observance of laws and regulations of the host State by the investors;

Desiring to intensify the economic cooperation of both Contracting Parties on the basis of equality and mutual benefits;

ACKNOWLEDGING the rights and responsibilities of the Contracting Parties to regulate investment within their territories in order to meet national policy objectives;

Have agreed as follows:

Part 1. GENERAL PROVISIONS

Article 1. Definitions

"Host State" means the Contracting Party in which the investment is located.

"ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

"ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965.

"Investment" means: every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

(a) shares, stock and other forms of equity participation in a company, and bonds, debentures and other forms of debt interests in a company;

(b) rights conferred by law or contract carried out for economic and commercial activities, such as concessions, licences, authorisations and permits, excluding natural resources;

(c) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges on real property; and

Any change in the form in which assets are invested shall not affect their characters as "Investments" if such change is made

in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

But "investments" does not mean;

1. a claim to money that arises solely from;

(a) a commercial contract for the sale of a goods or services by a national or enterprise in the territory of a Contracting Party, or

(b) the extension of credit in connection with a commercial transaction, such as trade financing, or

(c) any other claim to money, that does not involve the kinds of interests set out in subparagraphs (a) to (c) in the definition for investment;

2. Investment shall exclude assets not acquired in the expectation, or not used for the purpose of, economic activity or other business acquired for speculative purposes.

"Investor" means:

(a) natural persons being nationals of a Contracting Party, deriving their status as nationals from the domestic law of that Contracting Party, and who have made investments in the territory of the other Contracting Party; or

(b) legal person which is an economic entity established or constituted in accordance with the laws and regulations of that Contracting party conducting substantial business activity in the territory of one of the Contracting Parties and domiciled in its territory.

The concept of "substantial business activity" requires an overall examination, on a case-by-case basis, of all the circumstances, including, inter alia:

(i) the amount of investment brought into the country;

(ii) the number of jobs created;

(iii) the length of time the business has been in operation.

"Measures" means any legal, administrative, judicial or policy instrument adopted or maintained by a Party, directly relating to and affecting an investment in its territory, after this Agreement has come into effect.

"Returns" means all amounts yielded by an investment such as profits, dividends, interests, royalties, or any other fees.

"Secretary-General" means the Secretary General of ICSID.

"Territory" means:

(a) In respect of 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 laws and regulations and international law.

(b) In respect of the United Arab Emirates: the United Arab Emirates and when used in geographical sense, the area in which the territory is under its sovereignty as well as the territorial sea, airspace and sub-marine areas over which the United Arab Emirates exercises, in conformity with international law and the laws of the United Arab Emirates sovereign rights, including the main land and islands under its jurisdiction in respect of any activity carried on in connection with the exploitation for or the exploitation of natural resources.

"In like circumstances" means an overall examination on a case by case basis of all the circumstances of an investment including, inter alia,

a) its effects on the national environment, including the cumulative effects of all investments within a jurisdiction on the environment;

b) the sector of the investment;

d) the aim of the laws and regulations concerned.

Article 2. Scope of Application

(a) This Agreement applies only to investments once admitted in accordance with domestic laws, regulations and policies of

the Contracting Parties.

(b) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

(c) This Agreement does not apply to government measures relating to taxation and immigration.

Part 2. TREATMENT OF INVESTMENTS AND INVESTORS

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create conditions for investors of the other Contracting party to invest in its territory and shall admit such investment in accordance with its laws and regulations.

2. The Contracting Parties shall exchange information with respect to the investment opportunities, laws and regulation for foreign investors in their territories.

3. A Contracting Party shall accord investments of investors of the other Contracting Party protection no less favourable than that which it accords to investments of its own investors or to investments of investors of any third state.

4. 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, revolt, insurrection or riot in the territory of the Host State shall be accorded by the Host State. treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the Host State accords to investors of any third state. The above shall not include acts of God, natural hazard and force majeure.

Article 4. National Treatment

Each Contracting Party shall in accordance with its laws and regulation, accord to investors and their investments of the other Contracting Party a treatment no less favorable than that which it accords, in like circumstances, to its own investors and to their investments with respect to the management, operation, enjoyment, or disposition of their investments in its territory.

Article 5. Most Favored Nations Treatment

1. Each Contracting Party shall accord to investors and their investments of the other Contracting Party a treatment no less favorable than that which it accords, in like circumstances, to investors and their investments to any third country with respect to the management, operation, enjoyment, export or disposition of their investments in its territory.

2. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to investors and to their investments of the other Contracting Party the benefits of any treatment, preference or privilege which are extended or may be extended by the Contracting Party resulting from:

a) any existing or future customs union, economic or monetary union, a common market or a free trade area or similar economic integration institutions or any other international agreements to which either of the Contracting Party is or may become a party;

b) any international agreements, or arrangements pertaining wholly or mainly to taxation or to migration.

3. The obligation referred to in paragraphs (1) shall not apply to treatment accorded under any bilateral agreements in force or signed prior to the date of entry into force of this Agreement. For more certainty, MFN shall not apply to any procedural or judicial matters.

Article 6. Expropriation

1. A Contracting Party shall not nationalize or expropriate investments in its territory or. adopt any other measures tantamount to expropriation of investments except:

(a) for the public interest;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) on payment of prompt, and adequate compensation.

2. Adequate compensation shall normally be equivalent to the market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier.

Any payment shall be made in freely convertible currency. compensation shall include interest at the current commercial rate from the date of expropriation until the date of actual payment.

3. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international agreements on intellectual property.

4. Non-discriminatory measures of a Contracting Party that are designed and applied to protect or enhance legitimate public welfare objectives.

5. The investor affected by the expropriation shall have a right under the law of the Contracting Party making the expropriation, to a review by a judicial or other independent authority of that Contracting Party, of his/its case and the valuation of his/its investment in accordance with the principles set out in this Article.

Article 7. Transfer of Capital

1. A Contracting Party shall accord to investors the right to:

(a) Repatriate investment returns, such as profits, capital gains, dividends, royalties;

(b) repatriate funds for repayment of loans;

(c) repatriate proceeds from compensation upon expropriation, the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;

(d) transfer payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well replacing capital assets;

(e) remit the unspent earnings of expatriate staff of the investment project; and

(f) Payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the Contracting Party to the dispute.

2. Each Contracting Party shall allow transfers in paragraph 1 of this article to be made in a freely convertible currency at the prevailing rate of exchange prevailing at the time of transfer without unreasonable delay and restriction.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent or delay a transfer through the non-discriminatory application of its law and regulations relating to:

(a) Bankruptcy, insolvency, or the protection of the rights of creditors;

(b) Criminal offences and the recovery of the proceeds of crime where decisions have been made by judicial bodies in accordance with due process of law;

(c) Financial reporting or record keeping of transactions when necessary to assist law enforcement or financial regulatory authorities;

(d) Ensuring compliance with orders or judgments in judicial or administrative proceedings with due consultation with the investor concerned ;

(e) non-payment of taxes and other financial obligations owed to third parties or required by the laws and regulations of the host State;

(f) The formalities required to register and satisfy the Central bank and other relevant authorities of a Contracting Party.

Article 8. Subrogation

1. Where the Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risk in respect of an investment in the territory of the other Contracting Party and has made a payment to such investors in respect to their claims under this Agreement, the latter Contracting Party shall recognize that the former Contracting Party or its designated agency, by virtue of subrogation, is entitled to exercise the rights and to enforce the claims and be subject to obligations of its own investors. However, these rights or claims cannot be further assigned.
2. Subrogation shall take place after the prior written consent of the Host state in whose territory the investment is made.
3. The subrogation rights or claims shall not exceed the original rights or claims of such investors.
4. For the purpose of this article, a "designated agency" shall refer only to state agencies of a Contracting Party that provide political risk insurance.
5. Subrogation shall take place after the prior consent of the party whose subrogation is taking place on its territory.

Article 9. Measures to Safeguard Balance of Payments

Where payments and capital movements under this Agreement cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Contracting Party, the Contracting Party concerned may take safeguard measures with regard to capital movements for a period not exceeding twelve months if it considers such measures as strictly necessary.

Article 10. Senior Management and Board of Directors

1. A Contracting Party may not require that an investor appoints to senior management positions individuals of any particular nationality relating to its investment provided that the country of the employee has diplomatic relations with the Host State.
2. Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall give sympathy to entry to nationals of the other Contracting Party, employed by an investor of the other Contracting Party, who seek to render services to an investment of that investor in the territory of the Contracting Party, in a capacity that is managerial or executive or requires specialized knowledge.

Part 3. INVESTOR RESPONSIBILITIES

Article 11. General Obligations

1. Investors and investments are subject to the laws and regulations of the Host State.
2. Investors and investments shall strive, to the extent possible, through their management policies and practices, to contribute to the development objectives of the Host State and to the benefit of the local community where the investment is made.
3. An investor shall as far as possible provide such information to the Host State that may be required concerning the investment in question for purposes of decision-making in relation to that investment or solely for statistical purposes. The Contracting Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the investment.

Article 12. Environmental and Labour Standards

1. Recognizing the right of each Contracting party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and labour laws and standards, and to adopt or modify such laws, standards and policies, each Contracting Party shall strive to ensure that it provides for high levels of environmental and labour protection and standards and shall strive to continue to improve the same.

Article 13. Corporate Governance

Investments shall as far as possible meet national and internationally accepted standards of corporate governance for the sector involved, in particular for transparency and accounting practices.

Part 4. PROMOTION AND ENCOURAGEMENT OF INVESTMENTS

Article 14. Transparency

1. Each Contracting Party shall as far as possible publish, or otherwise make publicly available, its laws and regulations of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.
2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors of investments, the disclosure of which would impede law enforcement or be contrary to its domestic laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.
3. This article is not subject to the investor-state arbitration provision in Part 5 of this Agreement.

Part 5. DISPUTES BETWEEN CONTRACTING PARTIES

Article 15. Settlement of Disputes between a Contracting Party and an Investor

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in respect of an investment in the territory of the other Contracting Party shall, as far as possible, be settled through negotiation between the parties to the dispute.
2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall submit the dispute to the competent court or administrative tribunals of the Host State.

The notice of the claim shall specify:

- a) The name and address of the investor;
 - b) For each claim, the provisions of this Agreement, alleged to have been breached and any other relevant provisions;
 - c) The legal and factual basis for each claim; and
 - d) The relief sought and the approximate amount of damage claimed.
3. If the dispute cannot be settled within six months after resort to a court or administrative tribunal, either party to the dispute shall be entitled to submit the dispute to the national or international arbitration tribunals.
 4. The investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:
 - a) the International Centre for the Settlement of Investment Disputes /having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or
 - b) the Court of Arbitration of the International Chamber of Commerce; or
 - c) an International Arbitrator or Ad Hoc Arbitration Tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law; or
 - d) if after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures listed under sub Article c, the dispute shall at the request in writing of the investor concerned, be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force.
 5. The investor has no right to submit the dispute to the international arbitration in accordance with paragraph 4 of this Article, if more than 3 years is passed from the date on which the investor first became aware, or should have known about the origin of the circumstances that caused the dispute
 6. The arbitral awards shall be final and binding for both parties to the dispute.

7. Each party to the dispute shall bear the cost of its representation in the arbitral proceedings. The cost of the arbitrators and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 16. Disputes between the Contracting Parties.

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

2. If a dispute between the Contracting Parties cannot thus be settled within 6 months of the initiation of diplomatic negotiations to resolve the dispute, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State with which both Parties have diplomatic relations who on approval by the two Contracting Parties shall be appointed Chairperson of the tribunal. The Chairperson shall be appointed within two months from the date of appointment: of the other two members.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairperson and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 17. Governing Law

When a claim is submitted to a tribunal under this Agreement, it shall be decided in accordance with this Agreement, national law of the host state, and the general principles of international law.

Part 7. FINAL PROVISIONS

Article 18. Right to Regulate

1. In accordance with customary international law and other general principles of international law, the Host State has the right to take regulatory or other measures to ensure that development in its territory is consistent with the goals and principles of sustainable development, and with other social and economic policy objectives.

2. Non-discriminatory measures taken by a Contracting Party to comply with its international obligations under other treaties shall not constitute a breach of this Agreement.

Article 19. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors or investments were like conditions prevail, nothing in this Agreement shall be construed to oblige a Contracting Party to pay compensation by adopting or enforcing measures designed and applied:

(a) to protect public morals and safety;

(b) to protect human, animal or plant life or health; or

(c) for the conservation of living or non-living exhaustible natural resources.

2. Nothing in this Agreement shall prevent the Contracting Party from adopting or maintaining reasonable measures for prudential reasons, 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.

3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Contracting Party's obligations under Article 7 [Transfer of Capital];

4. Nothing in this Agreement shall apply to a Contracting Party's measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its national security interests.

5. Nothing in this Agreement requires a Contracting Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its national security interests. :

Article 20. Denial of Benefits

1. Each Contracting Party reserves the right to deny the benefits of this Agreement to an investor if the national of a third country owns or controls the investment.

2. If a national of a Contracting Party acquires the nationality of a third state for the sake of the benefit of this Agreement by establishing a legal entity, he shall not be entitled to the benefits of this Agreement.

Article 21. Service of Documents

Delivery of notice and other documents on a Contracting Party shall be made:

a) With respect to the UAE to the Ministry of Finance - International Financial Relations Department;

b) In case of the Federal Democratic Republic of Ethiopia to the Ethiopian Investment Commission.

Article 22. Entry Into Force

This Agreement shall be ratified and shall enter into force on the exchange of Instruments of Ratification by the Contracting Parties.

Article 23. Duration, Termination and Amendment

1. This Agreement shall remain in force for a period of ten years ("the initial duration"). Thereafter it shall terminate, unless the Contracting Parties have exchanged written notices of continuation within one year prior to expiry of its initial duration. Such continuation shall be for a period of five years, subject to further renewal in accordance with the above procedure. Either Contracting Party can terminate the agreement by giving a twelve-month notice period at any time after the initial duration period, notwithstanding any continuation of the agreement. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of five years after the date of termination.

2. This Agreement may be amended by the mutual consent of the Contracting Parties provided that one of the Contracting Parties presents a written proposal for amendment to the other Contracting Party. Amendments shall be made through the exchange of notes or signing of an amendment agreement.

Article 24. Authentic Text

Done in duplicate at Abu Dhabi this 03 Day of December 2016, in two originals each in Arabic and English languages, both the texts being equally authoritative. In case of any divergence, the English text shall prevail.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this

Agreement

FOR THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES