

# **AGREEMENT**

## **BETWEEN THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**

### **AND**

## **THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF**

## **INVESTMENTS**

The Governments of the Federal Democratic Republic of Ethiopia and The Great Socialist People's Libyan Arab Jamahiriya, hereinafter, referred to as the "Contracting Parties;"

Intending to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

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

Have agreed as follows:

### **Article 1.**

#### Definition

For the purpose of this Agreement:

1) The term "Investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter and in particular, though not exclusively, includes;

- a) Movable, immovable property and other property rights such as mortgages and pledges;
- b) Shares, stock and any other kind of participation in companies;
- c) Claims to money or to any other performance having an economic value;
- d) Copyrights, industrial property, know-how and technological process;
- e) Concessions conferred by law, includes to search for or exploit natural resources.

2) The term "Investors" means:

- a) Natural persons who, according to the laws of that Contracting Party are considered to be its nationals;
- b) A legal entity including companies, corporation, business associations, enterprises, which are constituted or otherwise

duly organized under the laws of that Contracting Party and have their seat, together with their economic activities, in the territory of that same Contracting Party.

3. The term "Returns" means the amounts yielded by investments such as profits, capital gains, dividends, interest, royalties, patents and license fees, surplus of liquidation, compensation and such other similar fees.

## **Article 2. Admission of Investment**

1) Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and such investments in accordance with its laws and regulations.

2) Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and work permit to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.

## **Article 3. Fair and Equitable Treatment**

1) Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall endure protection in the territory of the other Contracting Party.

2) The treatment and protection referred to in paragraph 1 of this Article shall at all times be not less favorable than that accorded to investments and activities associated with such investments of a third state.

3) The treatment and protection as mentioned in paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free trade zone, economic for facilitating frontier trade.

## **Article 4. Expropriation**

1) Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

a) For the public interests;

b) Under domestic legal procedure;

c) Without discrimination;

d) The above under a, b and c shall be made against payment of adequate and prompt compensations.

2) The compensation mentioned in paragraph 1 (d) of this Article shall be equivalent to the value of the expropriated investment at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

## **Article 5. Compensation for Loss**

Investors of Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or other settlements, no less favorable than the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payment shall be freely transferable in a freely convertible currency.

## **Article 6. Transfer of Investment at Return**

1) Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of their investments and returns held in the territory of the other Contracting Party, including:

a) Amounts from total or partial liquidation of investments;

b) Payment made pursuant to a loan agreement of investments;

c) Royalties in paragraph 1(d) of Article 1;

d) Payments of technical assistance in technical service fee, management fee;

e) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

2) The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting Party accepting the investments on the date of transfer.

## **Article 7. Subrogation**

If a Contracting Party or its Agency makes payment to an 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 Agency and recognize this subrogation of the former Contracting Party or its 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) Any dispute 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 the dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party, be submitted to an ad hoc Arbitral Tribunal.

3) Such Tribunal comprises of three arbitrators. 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. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third state which has diplomatic relations with both Contracting Parties as Chairman of the Arbitral Tribunal.

4) If the Arbitral Tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not yet been appointed. 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 appointments (s).

5) The Arbitral Tribunal shall determine its own procedure. The Tribunal shall reach its award in accordance with the provisions of this Agreement and the generally accepted principles of international law by both Contracting Parties.

6) The Tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc Arbitral Tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7) Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the Tribunal shall be borne in equal parts by the Contracting Parties.

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

1) Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

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

3) If a dispute involving the amount of compensation for expropriations cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc Arbitral Tribunal. The provisions of this

Paragraph shall not apply if the investor concerned has resorted to the procedure specified in the Paragraph 2 of this Article.

4) Such an Arbitral Tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third state which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

5) The Tribunal shall determine its own procedure. However, the Tribunal may, in the course of determination of its procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6) The Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

7) The Tribunal shall adjudicate in accordance with the laws of the Contracting Party to the dispute accepting the investment including its rules on the conflict of law, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

8) Each Party to dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the

Appointed Chairman and the remaining costs shall be born in equal parts by the parties to the disputes.

## **Article 10. Most Favored Nation Treatment**

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investment of investors of the other Contracting Party is more favorable than the treatment provided for in this Agreement, the more favorable treatment shall be applicable.

## **Article 11. Application of the Agreement**

This Agreement shall apply to existing investments or investment made after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the Latter. It shall, however, not be applicable to claims and disputes that arose before the entry into force of this Agreement.

## **Article 12. Entry Into Force, Duration and Termination**

1) This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of 10 years.

2) This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3) After the expiration of the initial-ten years period either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

In witness whereof, the duly authorized representatives of the respective Contracting Parties have signed this Agreement.

Done in duplicate at Addis Ababa on 27 January 2004 in the English and Arabic Languages, all texts being equally authentic.

For the Government of the Federal Republic of Ethiopia  
Abi Woldemeskel  
Commissioner of the Ethiopian Investment Commission

For the Government of the Great Socialist People's Libyan Arab Jamahiria

Abdul Rahman Mohamed Shalgam

Secretary of the General Committee of the Foreign and International Cooperation