

# Agreement between the Swiss Confederation and the Federal Democratic Republic of Ethiopia on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of the Federal Democratic Republic of Ethiopia,

Desiring to intensify economic cooperation in the mutual interest of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party,

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term refers investor with regard to either Contracting Party:
  - a. Any natural person who, according to the law of that Contracting Party, are considered to be its nationals;
  - b. Any legal person which is constituted or otherwise organised under the law of that Contracting Party and have important economic activities in the territory of that same Contracting Party;
  - c. Any legal person who is not established in accordance with the law of that Contracting Party: if more than 50% of their equity capital is owned by persons of that Contracting Party; when persons of that Contracting Party has the power to name a majority of its directors or otherwise legally authorized its direct opérations. if more than 50% of their equity capital is owned by persons of that Contracting Party; when persons of that Contracting Party has the power to name a majority of its directors or otherwise entitled by law to direct its actions.
2. The term "investment" includes all categories of assets and in particular:
  - a. Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, guarantees and usufruits;
  - b. The actions, and other forms of participation shares in companies;
  - c. Monetary claims and rights to any performance having economic value;
  - d. Copyrights, industrial property rights (such as patents for invention, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin), know-how and goodwill;
  - e. Concessions or similar rights conferred by law or under contract, including extract concessions to search for or exploit natural resources.
3. The term means the returns amounts derived from an investment includes, interests and profits, capital gains, dividends, royalties and fees.
4. The term territory means the territory of each Contracting Party in which that State may exercise sovereign rights or jurisdiction in accordance with international law.

## Article 2. Scope

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force. It does not apply to claims arising out of events which occurred prior to its entry into force.

### **Article 3. Encouragement , Admission**

1. Each Contracting Party shall encourage investments of investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.
2. Each Contracting Party shall facilitate, in accordance with its laws and regulations the necessary permits in connection with such investments, including those relating to the enforcement of contracts, technical assistance, commercial or administrative, as well as the required authorisations for the activities of consultants and experts.

### **Article 4. Protection, Treatment**

1. Returns of investments and investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and security in the territory of the other contracting party. no Contracting Party shall in any way hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, extension or disposal of such investments.
2. Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, more favourable treatment to the investor concerned is crucial.
3. Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, the utilisation, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors to investors of any third State, more favourable treatment to the investor concerned is crucial.
4. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union or common market or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.
5. To prevent any ambiguity, it is confirmed that the principle of national treatment referred to in paragraphs 2 and 3 of this article shall apply to Investment lawfully admitted that a specific authorisation is required.

### **Article 5. Free Transfer**

1. Each Contracting Party shall guarantee to investors of the other contracting party without delay the transfer in a freely convertible currency of the amounts relating to an investment, including:
  - a. Income;
  - b. Payments or other obligations relating to loans for investment;
  - c. The proceeds of the sale of or the liquidation of the partial or total investment, including the appreciation thereof;
  - d. Other earnings and remuneration of personnel engaged from abroad in connection with the investment;
  - e. The initial capital and additional amounts needed for the maintenance or increase investment.
2. Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment has been made.

### **Article 6. Dispossession , Compensation**

1. Neither Contracting Party shall take any measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other contracting party except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the compensation shall amount to the market value of the expropriated investment immediately before the expropriation was taken or they are known to the public, the first of those

events in determining, the amount of compensation shall include the usual bank interest from the date of dispossession until payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or its headquarters.

2. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency or revolt, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors or those of any third State as regards restitution, indemnification, compensation or other settlement.

## **Article 7. Principle of Subrogation**

Where a Contracting Party has provided any financial guarantee against non-commercial risks to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party.

## **Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. With a view to finding an amicable solution of disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

2. If these consultations do not solution within six months from the date of the written request, to initiate the investor may submit the dispute for resolution to his choice:

a. The competent court of the Contracting Party in whose territory the investment has been made; or

b. The International Centre for the Settlement of Investment Disputes (ICSID, established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1), opened for signature at Washington on 18 March 1965, when both parties are contracting parties to the Convention; or

c. To an ad hoc arbitral tribunal which, unless otherwise agreed by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The Contracting Party which is a party to the dispute shall at no time in any proceeding involving a dispute relating to an investment, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the loss or damage sustained.

4. Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other contracting party does not comply with an arbitral award.

5. The arbitral award shall be final and binding upon the parties to the dispute and shall be executed according to the national legislation.

## **Article 9. Disputes between the Contracting Parties**

1. Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both contracting parties fail to reach a settlement within six months of the dispute arises, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

4. If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is

prevented from carrying out this function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own rules of procedure.

7. The decisions of the Tribunal shall be final and binding on the contracting parties.

## **Article 10. Other Commitments**

1. If the provisions of the legislation of a Contracting Party or an international agreement to which both contracting parties are signatories, accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.

2. Each Contracting Party shall observe with any obligation it has assumed in respect of an investment in its territory by investors of the other contracting party.

## **Article 11. Final Provisions**

1. This Agreement shall enter into force on the day on which the two Contracting Parties shall have notified each other that the legal requirements for the entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced with 12 months notice in writing before the expiry of this period, it shall be considered on the same terms as renewed for successive periods of five years.

2. In the event of a written notice, the provisions of articles 1 to 10 of this Agreement shall continue to apply for a further period of ten years for investments made prior to the termination.

In WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at the Crans Montana, on 26 June 1998, each in two originals in the English language.