

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF TRANSITION OF ETHIOPIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Italy and the Transitional Government of Ethiopia hereinafter referred to as the Contracting Parties;

Recognizing the importance of promoting investment in both countries;

Desiring to create favorable conditions for improved economic cooperation between them particularly with regard to investment, encouraging investors of one Contracting Party to invest in the territory of the other Contracting Party,

Have agreed as follows:

## **Article 1. Definition**

For purposes of this Agreement:

1. The term "investment" shall mean any investment made by a natural or legal person of one Contracting Party on the territory of the other Party, in accordance with the laws and regulations of the Contracting Parties after the entry into force of this Agreement and regardless of the legal form and legal system of reference.

It shall also include existing investments that meet the legal criteria in force under the laws of each Contracting Party on the date of entry into force of this Agreement. Without prejudice to the general character of the foregoing, the term "investment" shall include in particular, but not exclusively:

- (a) movable and immovable property, as well as any other right of ownership in rem, including rights in rem in respect of third party property. insofar as they may constitute the object of investment;
- b) shares, bonds, participation shares and any other form of credit, as well as government and public securities in general;
- c) financial receivables or any other service right for commitments or services of an economic nature relating to an investment, including reinvested investment income and capital gains;
- d) copyrights, trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill
- e) all rights of an economic nature. conferred by law or contract, as well as all licenses and concessions granted in accordance with current regulations for the exercise of economic activities, including the rights of exploration, cultivation, extraction and exploitation of natural resources
- (f) any increase in the value of the original investment.

A change in the form of investment of assets does not affect their nature as an investment subject to the applicable laws and regulations of the respective countries.

2. The term "investor" means any natural or juridical person of one Contracting Party that has made, is making or intends to make investments in the territory of the other Contracting Party, as well as foreign branches, subsidiaries and branches, in any way controlled by the aforementioned natural and juridical persons.

3. The term "natural person", with respect to each Contracting Party, means any natural person who is a national of that State in accordance with its laws.

4. The term "juridical person", with reference to each Contracting Party, means any entity having its principal place of

business in the territory of one of the Contracting Parties and recognized by the latter, i.e. public institutions, partnerships or corporations, foundations, associations, whether their liability is limited or not.

5. The term "income" means sums derived or to be derived from an investment, including, in particular, profits or interest, income from interest, income from capital, dividends, royalties or remuneration for assistance and technical services, as well as any other form of payment in kind such as, but not limited to, raw materials, commodities, industrial products or livestock.

6. The term "territory" means, in addition to the areas delimited by land borders, the "maritime areas". The latter include marine and submarine areas over which the Contracting Parties have sovereignty or over which they exercise, according to international law, rights of sovereignty or jurisdiction.

7. "Investment Agreement" means an agreement between a Party (or its agencies or representatives) and an investor of the other Party, relating to an investment.

8. "Non-discriminatory treatment" means treatment at least as favorable as that of the most-favored nation.

9. "Right of Access" means the right to make investments in the territory of the other Party in accordance with the laws and regulations in force in their respective countries including access in any currency to financial institutions, credit and currency markets and funds held in financial institutions.

## **Article 2. Promotion and Investment Protection**

1. Both Contracting Parties shall encourage investors from the other Contracting Party to make investments in their territory.

2. Both Contracting Parties shall at all times ensure fair and equitable treatment of investments by investors of the other Contracting Party.

Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or disposal of investments made in its territory by investors from the other Contracting Party, as well as the companies and enterprises in which such investments have been made, shall not be affected in any way by unjustified or discriminatory measures.

3. Each Contracting Party shall create and maintain in its territory a legal framework that guarantees investors continued legal treatment, including the observance in good faith of all commitments it has entered into with respect to each specific investment.

## **Article 3. National Treatment and Most Favored Nation Clause**

1. The Contracting Parties on whose territory the investment is made undertake not to interfere directly or indirectly with the regular operations of the investment projects. In particular, they undertake to ensure that they will not impose discriminatory taxes, nor restrict the supply of raw materials or create obstacles to the smooth operation of investment projects such as to have the impact of expropriation or the like, nor will they or their officials practise unjustified or discriminatory treatment.

2. Each Contracting Party shall, within the limits of its own territory, accord to the investments and income of investors of the other Contracting Party, including the matters referred to in Articles 4.5, 6 and 7 and the income accruing therefrom, treatment no less favourable than that accorded to the investments and income accruing therefrom of investors of any third State.

3. If legislation of one of the Contracting Parties or international obligations in force or which may come into force in the future in respect of one of the Contracting Parties results in a legal framework under which investors from the other Contracting Party are accorded more favourable treatment than that provided for in this Agreement, the treatment accorded to investors from these other Parties shall also apply to investors from the Contracting Party concerned in respect of existing relations.

4. The provisions of paragraphs 1 and 2 of this Article shall not refer to the advantages and privileges that one of the Contracting Parties may grant to investors of third States by virtue of their membership in a Customs or Economic Union, a Common Market, a free trade area, a regional or sub-regional agreement, an international multilateral economic agreement or on the basis of Agreements concluded for the purpose of preventing double taxation or facilitating cross-border trade.

## **Article 4. Compensation for Damages and Losses**

1. Citizens or corporations of either Contracting Party who suffer losses in investments made by them in the territory of the other Party as a result of war or other armed conflict, a state of national emergency or civil emergency in the territory of that other Contracting Party, shall receive from the latter Contracting Party, with respect to restitution, indemnification, compensation or any other settlement, treatment no less favorable than that which the latter Contracting Party accords to its own citizens or corporations, or to citizens or corporations of any Third Party.

Payments made in this capacity shall be freely transferable without undue delay

## **Article 5. Nationalization or Expropriation**

1. The investments referred to in this Agreement shall not be subject to any measure that may have the effect of restricting, for a definite or indefinite period of time, the rights of possession, control and enjoyment inherent therein, except as specifically provided for by national or local laws or regulations, or as a result of administrative decisions and rulings issued by the competent judicial authorities.

2. Investments of investors of the Contracting Parties shall not be nationalized, expropriated, seized or subject to measures having similar effects in the territory of the other Contracting Party, except for purposes of public interest, for reasons of national interest, and against immediate, full and effective compensation and provided that such measures are taken on a non-discriminatory basis and in accordance with all legal provisions and procedures.

Compensation shall be equivalent to the fair market value of the expropriated investment immediately prior to the date on which the actual nationalization, expropriation or confiscation is announced or made public. In the absence of an understanding between the Contracting Party, on whose territory the investment is made, and the investor in the nationalization or expropriation procedure, the compensation shall be based on the same benchmarks and exchange rates adopted in the constituent documents of the investment.

3. The compensation shall be equivalent to the fair market value of the nationalized, expropriated or confiscated property in order to reinstate the investor in the same credit position as if the expropriation or nationalization measures had not been taken.

4. The exchange rate applicable to any compensation shall be the rate prevailing on the immediately preceding date when the decision to nationalize or expropriate was announced or made public.

5. Compensation will be settled without delay and in any event within three months, in the currency in which the principal of the investment was provided, or in a freely convertible currency, including accrued interest, payable on a semi-annual Libor basis from the date of nationalization or expropriation until the date of payment.

6. The provisions of Paragraph 2 of this Article shall also apply to income derived from an investment as well as, in the event of liquidation, to benefits derived therefrom.

7. A citizen or corporation of either Party alleging that all or part of an investment has been expropriated shall have the right to seek review by the competent judicial or administrative authorities of the other Party to determine whether the expropriation that has occurred is of this type and, if so, whether such expropriation and any compensation are in accordance with recognized principles of international law and to make a determination with respect to any other related matters.

## **Article 6. Repatriation of Capital, Profits and Income**

Each Contracting Party will grant to investors of the other, the transfer abroad in any convertible currency and without undue delay of the following:

(a) capital and additional portions of capital, including reinvested income, used for the maintenance and increase in value of investments;

(b) net income, dividends, royalties, fees for technical assistance and services, interest and other profits;

(c) amounts derived from the sale in whole or in part, or the liquidation in whole or in part, of an investment;

d) funds for the repayment of loans obtained in accordance with the laws and regulations of the respective countries relating to an investment, including the payment of interest thereon;

e) salaries and compensation paid to nationals of the other Contracting Party for work and services rendered in connection with an investment made in the territory of the other Contracting Party, to the extent and in the manner provided for by the

laws and regulations in force.

## **Article 7. Subrogation**

In the event that a Contracting Party or its institution has provided a guarantee for non-commercial risks for an investment made by one of its investors in the territory of the other Contracting Party and has made a payment to such investor under such guarantee, such other Contracting Party shall recognize the assignment of the investor's rights to the said Contracting Party. With respect to the transfer of the Payments to the Contracting Party or its institution by virtue of such assignment, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

## **Article 8. Transfer Modalities**

1. The transfers referred to in Articles 4,5,6 and 7 shall be made in convertible currency in accordance with customary banking procedures, without undue delay and in any event within a period of six months after the discharge of all tax obligations. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor requests the relevant transfer, subject to the provisions of Paragraph 4 of Article 5 regarding the exchange rate applicable in the event of nationalization or expropriation.

2. The tax obligations referred to in the preceding paragraph shall be deemed to be discharged when the investor has complied with the requirements of the law of the Contracting Party on whose territory the investment has been made.

## **Article 9. Settlement of Disputes between Investors and Contracting Parties**

1. Any dispute arising between one of the Contracting Parties and the investors of the other Contracting Party relating to investments, including disputes concerning the amount of compensation, shall, as far as possible, be settled amicably.

2. In the event that the investor and an Entity of one of the Parties have entered into an investment agreement, the procedure set forth in such investment agreement shall be applicable.

3. If such disputes cannot be settled amicably within six months from the date of the written request for settlement, the investor concerned may submit the dispute, at its option :

a. to the courts of the Contracting Party having territorial jurisdiction;

b. to an ad hoc arbitral tribunal, in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), and the receiving Contracting Party hereby undertakes to accept the submission of the dispute to such arbitral tribunal; or

c. to the International Centre for the Settlement of Investment Disputes for the implementation of arbitration procedures under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States if the two Contracting Parties have acceded thereto or at such time as they may do so.

4. The two Contracting Parties shall refrain from dealing diplomatically with matters pertaining to arbitration proceedings or judicial proceedings already commenced for as long as such proceedings have not been concluded and in the event that one of the Parties to the dispute has not complied with the judgment of the Arbitral Tribunal or of the Ordinary Tribunal seized, within the time limits for compliance prescribed in the judgment, or within such other time limits as may be determined on the basis of the international or domestic law applicable to the case.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Any dispute arising between the Contracting Parties in relation to the interpretation and application of this Agreement shall as far as possible be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months from the date on which either Contracting Party has given written notice to the other, the dispute shall, at the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal as provided in this Article.

3. The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of said Tribunal.

The President shall be appointed within three months from the date of appointment of the other two members.

4. If the appointments have not been made within the time limits specified in paragraph 3 of this Article, either of the two Contracting Parties may, in the absence of other arrangements, request that the President of the International Court of Justice make the appointments. If the latter is a national of one of the Contracting Parties or if he is unable to accept the appointment for any reason, the request will be addressed to the Vice-President of the Court. If the Vice-President is also a national of one of the Contracting Parties or if he/she is also unable, for any reason, to accept the appointment, the invitation shall be addressed to the most senior member of the International Court of Justice who is not a national of one of the Contracting Parties.

5. The Arbitral Tribunal shall decide by majority vote and its decisions shall be binding. Each of the Contracting Parties shall bear the costs of its own arbitrator and those of its representatives at the hearings. The expenses for the President and all other expenses shall be borne by both Parties equally.

The Arbitral Tribunal will establish its own procedures

## **Article 11. Relations between Governments**

The provisions contained in this Agreement shall be applied whether or not diplomatic or consular relations exist between the Contracting Parties.

## **Article 12. Application of other Agreements**

1. If a matter is governed by both this Agreement and another International Agreement to which both Contracting Parties are signatories, or by general rules of international law, the most favorable provisions shall apply to the Contracting Parties and their investors.

2. Where the treatment accorded by one Contracting Party to investors of the other Contracting Party under its laws, regulations or other provisions, or under contracts or specific investment authorizations or agreements, is more favorable than that provided for in this Agreement, the more favorable treatment shall be applied.

## **Article 13. Entry Into Force**

1. This Agreement shall be ratified; the exchange of instruments of ratification shall take place as soon as possible.

2. This Agreement shall enter into force one month after the date of exchange of instruments of ratification.

It will remain in force for a period of ten years and will be extended for an unlimited period, unless it is denounced in writing to one of the Contracting Parties twelve months before its expiry.

After the expiration of a ten-year period, this Agreement may be terminated at any time by either Contracting Party upon twelve months' notice.

3. For investments made prior to the date of termination of this Agreement, the provisions of Articles 1 through 10 shall remain in effect for an additional period of five years from the date of termination of this Agreement.

DONE at Addis Ababa, Ethiopia, this twenty-third day of December, one thousand nine hundred and ninety-four, in duplicate in the English and Italian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE TRANSITIONAL GOVERNMENT OF ETHIOPIA

## **PROTOCOL**

In signing the Agreement between the Government of the Italian Republic and the Transitional Government of Ethiopia on the promotion and protection of investments, the Contracting Parties have also established the following clauses which shall be considered an integral part of the Agreement.

### **1. General Provisions**

This Agreement and all the "investment" provisions of this Agreement are also applicable to the following related activities, subject to the applicable laws and regulations of the respective countries:

Organization, control of activities, maintenance and transfer of enterprises, branches. Agencies, offices, establishments or other facilities for business management; drafting, applying and enforcing contracts; purchasing, issuing and selling common stock and other securities; and purchasing currency for imports.

"Related activities" also include, without limitation:

I) assignment of contract concessions or rights under licenses;

II) documentation of registrations, licenses, permits and other approvals necessary for the conduct of business, which shall in all cases be issued expeditiously, as required by the laws of the Parties;

III) importation and installation of equipment necessary for the normal conduct of business, including, but not limited to, office equipment and automobiles imported for this purpose;

IV) dissemination of business information;

V) Conducting market research;

VI) Appointing sales representatives, including agents, consultants and distributors (e.g., brokers in the distribution of products not manufactured by them), and their services as such, as well as their participation in trade shows and other promotional events;

VII) marketing of goods and services, including through internal distribution and marketing systems, through advertising and direct contact with citizens and companies

VIII) payment for goods and services in local currency.

## **2. With respect to Article 2**

a) The Contracting Parties may stipulate in their Investment Agreement the conditions that will govern their specific legal relations related to the investment.

b) Neither of the Contracting Parties shall impose any conditions on the establishment, expansion or continuation of any investment that would have the effect of incurring or imposing any obligation with respect to domestic or international sales. With respect to the procurement or importation of capital goods and equipment, each investor will be able to procure all types of goods, provided they are not available in the country in similar quality or at similar prices.

(c) Each Contracting Party will provide effective means for filing claims to protect rights in connection with investments, as well as related permits and investment agreements.

(d) Subject to applicable laws and regulations, nationals of both Contracting Parties will have the right to work in the territory of the other Contracting Party in connection with the investment. They will be provided with adequate working conditions for the performance of their professional activities.

e) Subject to applicable law, the competent authorities of the Contracting Parties shall permit nationals of the other Contracting Party and their dependents to enter or leave the territory of the other Contracting Party or to remain there for the purpose of developing, developing, managing or advising on the implementation of an investment for which they, or a company of the Party on which they are dependent, are engaged or in the process of implementing an investment project.

(f) In the case of a joint investment, the choice and the regulation of management positions in the companies related to the investment to be formed; in any case, the distribution will be dictated by principles of equity.

Companies that belong to or are fully controlled by the other Party shall be entitled to employ the highest ranking management personnel of their choice.

## **3. With respect to Article 3**

a) All activities related to the procurement, sale or transportation of raw or processed materials, energy, fuels and means of production as well as any other kind of related activities and managerial activities under this Agreement shall be accorded in the territory of each Contracting Party treatment no less favorable than that accorded to similar activities of domestic investors of a third country.

## **4. With respect to Article 9**

Pursuant to Article 9 (3) (b) the arbitration shall be conducted in accordance with the arbitration rules and regulations of the United Nations Commission on International Trade Law (UNCITRAL) as set forth in General Assembly Resolution 31/98 of December 15, 1976, as well as in accordance with the following provisions:

(a) The Arbitral Tribunal shall be composed of three arbitrators; if they are not nationals of the Contracting Parties, they shall be nationals of States that maintain diplomatic relations with both Contracting Parties.

The appointment of the arbitrators, if necessary according to the UNCITRAL Rules, shall be made by the President of the Arbitration Institute of the Stockholm International Chamber of Commerce, in his capacity as Designating Authority. The place of arbitration shall be agreed upon by both Contracting Parties.

b) In rendering its decision, the Arbitral Tribunal shall in all cases also apply the provisions contained in this Agreement as well as the generally recognized principles of international law.

Recognition and enforcement of the arbitral award in the territory of the Contracting Parties shall be governed by the respective domestic laws of the Contracting Parties in accordance with the relevant international conventions to which they are signatories.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect by their respective Governments, have signed this Protocol.

DONE at Addis Ababa, Ethiopia, this twenty-third day of December, one thousand nine hundred and ninety-four, in duplicate, in the English and Italian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE TRANSITIONAL GOVERNMENT OF ETHIOPIA

## **ORAL MINUTES**

The year one thousand nine hundred and ninety-six, on the twenty-fifth day of June, in the premises of the Ministry of Foreign Affairs, the undersigned:

Embassy Counsellor Renzo Pennacchioni, Head of the Treaties Office of the Service of Diplomatic Litigation, Treaties and Legislative Affairs, and VII q.f. Angela BOSIO, serving in the aforementioned Treaties Office of the Service of Diplomatic Litigation, proceeded to correct the following material errors in the Italian language text in possession of the Italian part of the Agreement between the Government of the Italian Republic and the Transitional Government of Ethiopia for the promotion and protection of investments, with Protocol signed in Addis Ababa on December 23, 1994:

Article 4, paragraph 1, lines 3-4

"shall receive, as regards restitution, indemnity, compensation or any other settlement,"

has been corrected with:

"shall receive, from the latter Contracting Party, with respect to restitution, indemnification, compensation or any other settlement,"

Of the foregoing, this Minutes, consisting of pages one, closed this 25th day of June, 1996, at 1:20 p.m., has been prepared