

Treaty between the Federal Republic of Germany and the Federal Democratic Republic of Ethiopia concerning the Encouragement and Reciprocal Protection of Investments

The Federal Republic of Germany and the Federal Democratic Republic of Ethiopia –

Desiring to intensify economic co-operation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State,

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations –

Have agreed as follows:

Article 1. Definitions

For the purposes of this Treaty

1. the term "investments" comprises every kind of asset, in particular:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

(b) Shares of companies and other kinds of interest in companies;

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and good will;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment;

2. The term "returns" means the amounts yielded by an investment for a definite period, such as profit, dividends, interest, royalties or fees;

3. The term "investors" with regard to either Contracting Party refers to:

(a) Natural persons who

– in respect of the Federal Republic of Germany are Germans within the meaning of the Basic Law of the Federal Republic of Germany, and

– in respect of the Federal Democratic Republic of Ethiopia are persons who are nationals of Ethiopia according to its applicable laws,

(b) Legal entities, including companies, corporations, business associations and other organizations, with or without legal personality, which have their seat in the territory of that Contracting Party, irrespective of whether or not their activities are directed at profit;

4. The term "territory" means

(a) In respect of the Federal Republic of Germany:

The territory of application of the law of the Federal Republic of Germany and the territory where international law permits the Federal Republic of Germany to exercise sovereign rights or jurisdiction,

(b) In respect of the Federal Democratic Republic of Ethiopia:

The territory which constitutes the Federal Democratic Republic of Ethiopia and recognized under international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall within the framework of its policies in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

(2) Each Contracting Party shall in its territory in any case accord investments by investors of the other Contracting Party fair and equitable treatment as well as full protection under the Treaty. Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.

(3) Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of investors of the other Contracting Party.

(4) The Contracting Parties shall within the framework of their national legislation consider in good faith applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be considered in good faith.

(5) The investors of either Contracting Party have the right to choose international means of transport for the transport of persons and capital-goods directly connected with an investment within the meaning of this Treaty without prejudice to rights and obligations conferred by relevant bilateral or multilateral agreements binding on either Contracting Party.

Article 3. National Treatment and Most-favoured-nation Treatment

(1) Once an investment is admitted in accordance with the applicable laws of the respective Contracting Party, each Contracting Party shall accord to this investment no less favourable treatment than that accorded to investments of its own investors or to investments of investors of any third State.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activities such as the management, maintenance, use, enjoyment and disposal of their investments in its territory, to treatment less favourable than it accords to its own investors or to investors of any third State.

(3) The following shall, in particular, be deemed "treatment less favourable" within the meaning of this Article: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the wholesale marketing of products inside or the marketing of products outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of this Article.

(4) Such treatment shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area or by virtue of a double taxation agreement or other agreements regarding matters of taxation.

(5) The provisions of this Article do not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

Article 4. Protection of Investments and Compensation In Case of Expropriation

(1) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except under the following conditions:

(a) The measures are taken for a purpose which is in the public benefit and under due process of law;

(b) The measures are not discriminatory; and

(c) The measures are taken against payment of prompt, adequate and effective compensation.

(3) Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be effectively realizable and freely transferable. Adequate preparation shall have been made not later than at the time of expropriation, nationalization or comparable measure for the determination of such compensation.

(4) The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(5) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. Compensation for Losses

(1) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification or any other compensation. Such payments shall be freely transferable.

(2) Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 6. Free Transfer of Payments

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment, in particular

(a) The principal and additional capital investment to maintain or increase the investment;

(b) The returns;

(c) The repayment of loans;

(d) The proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) The compensation provided for in Article 4; Article 4;

(f) The earnings of nationals of the other Contracting Party who are employed in connection with an investment.

(2) Transfers under Article 4 (2) or (3), under this Article or Article 7 shall be made without delay at the applicable rate of exchange in a freely convertible currency. A transfer shall be deemed to have been made "without delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the request has been made, with relevant and complete documentation, and may on no account exceed two months.

(3) This rate of exchange shall reflect the prevailing rates of conversion of the respective currencies into US-Dollar in the countries concerned.

Article 7. Subrogation

If either Contracting Party makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of such investor to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 4 (2) and (3) as well as Article 6 shall apply *mutatis mutandis*.

Article 8. Applicability of other Rules and Provisions

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulation shall to the extent that it is more favourable prevail over this Treaty.

(2) A Contracting Party shall adhere to any other obligation deriving from a written commitment undertaken by it in favour of an investor of the other Contracting Party with regard to an investment in its territory.

Article 9. Scope of Application

This Treaty shall apply to investments made in the territory of either Contracting Party in accordance with its laws and regulations prior to or after its entry into force. It shall, however, not be applicable to claims arising out of disputes which occurred prior to its entry into force.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Treaty should as far as possible be settled by the governments of the Contracting Parties through consultation.

(2) If the dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an international arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the 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 should 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 Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different decision concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Disputes concerning investments between one of the Contracting Parties and an investor of the other Contracting Party shall as far as possible be settled amicably between the parties to the dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties to the dispute, it shall be submitted, upon request of the investor, to

(a) The competent courts of the Contracting Party in whose territory the investment has been made,

(b) An ad-hoc tribunal that has been established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL),

(c) The International Centre for Settlement of Investment Disputes, established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington D.C. on 18 March 1965, where both Contracting Parties are members of the Convention,

(d) The Additional Facility according to the Rules Governing the Additional Facility for Administration of Proceedings by the

Secretariat of the International Centre for Settlement of Investment Disputes, where at least one Contracting Party is a member of the Convention mentioned under (c).

(3) If an investor from the Federal Republic of Germany has seized a local court in the Federal Democratic Republic of Ethiopia, the dispute can be submitted to international arbitration only if the local court has not yet rendered a decision which finally disposes the case.

(4) The award shall be binding on both parties and shall not be subject to any appeal or remedy other than those provided for in the said instruments. The award shall be enforced in accordance with domestic law.

(5) During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under a guarantee referred to in Article 7 in respect of all or part of the damage.

(6) In the event of both Contracting Parties having become Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes under this Article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance of such a procedure.

(7) In case an investor of one Contracting Party has, according to the terms of an investment agreement concluded between this investor and the other Contracting Party, initiated a different dispute settlement mechanism, paragraphs (1) to (6) of this Article shall only be invoked if the competent body under that investment agreement has not rendered a decision within a period of 18 months from the date of the beginning of such dispute settlement, or if that decision disregards the provisions of this Treaty.

Article 12. Entry Into Force, Duration and Termination

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless a notice of termination has been given in writing through diplomatic channels by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Treaty may be denounced in writing through diplomatic channels at any time by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of this Treaty, the provisions of Articles 1 to 11 shall continue to be effective for a further period of fifteen years from the date of termination of this Treaty.

(4) This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

For the Federal Republic of Germany Chrobog For the Federal Democratic Republic of Ethiopia Dr. Tekeda Alemu