

AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECI PROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Sweden and the Government of the Federal Democratic Republic of Ethiopia hereinafter referred to as the Contracting Parties;

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "investment" shall mean any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively: (a) Movable and immovable property, including property under a leasing agreement, as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and other kinds of interest in a company or business enterprise;

(c) Claims to money or any performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) "investor" shall mean with regard to either Contracting Party: (a) Any natural person who is a national of that Contracting Party in accordance with its law;

(b) Any legal person constituted or otherwise duly organized under the laws of that Contracting Party and having its seat and pursuing economic activity in the territory of that Contracting Party;

(c) Any legal person not constituted under the law of that Contracting Party but controlled by natural persons as defined in (a) or by legal persons as defined in (b).

(3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.

(4) "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone and the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory and in accordance with its applicable laws and regulations encourage and admit investments by investors of the other Contracting Party.

(2) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(3) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

(4) Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with the recognized principles of international law, the municipal law of the Contracting Party and the provisions of this Agreement as applicable.

(5) Each Contracting Party shall observe any commitment it has entered into with an investor of the other Contracting Party with regard to his investment.

(6) Returns yielded from an investment and the proceeds resulting from the liquidation of an investment shall be given the same treatment and protection as an investment.

Article 3. National and Most Favoured Nation Treatment of Investments

(1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.

(2) The treatment mentioned in paragraph 1 of this Article shall not be construed so as to oblige a Contracting Party to extend to the investors or investments of the other Contracting Party the benefits of any treatment, preference or privilege resulting from any existing or future free-trade area, custom union, common market or economic union to which either of the Contracting Parties is or may become a member.

(3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment (hereinafter referred to as "expropriation" unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation") or the impending expropriation became publicly known so as to affect the value of the investment.

(3) The compensation shall be paid without delay, be fully realisable and freely transferable in a convertible currency. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which it would have been had the compensation been paid immediately on the date of expropriation, including interest at a normal commercial banking rate from the date of expropriation until the date of payment.

Article 5. Compensation for Damage and Loss

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State.

Article 6. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, and shall include in particular, though not exclusively:

- (a) The returns;
- (b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;
- (c) Funds in repayment of loans;
- (d) A compensation according to Article 4 or 5; and
- (e) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be affected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

(3) Transfers shall be made pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made in conformity with paragraph 1 and 2 of this Article.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted 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 9, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former

Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

Article 8. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora without prejudice to the investor's rights to submit an investment dispute to a competent court of the Contracting Party alternatively:

- i) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, provided that both Contracting Parties are parties to the said Convention, or
- ii) The ICSID under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the ICSID (ICSID Additional Facility Rules), provided that one, but not both, of the Contracting Parties is a party to the Washington Convention, or
- ii) An ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID.

If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose. (3) For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting

party and which, before a dispute arises, was effectively controlled by an investor of the other Contracting Party, shall be treated as a legal person of the other Contracting Party.

(4) Any arbitration under the UNCITRAL Arbitration Rules shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(5) The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre), the ICSID Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(6) In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

(7) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 10. Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute or claim concerning an investment arising out of events which occurred, or to any such claim which had been settled, before its entry into force.

Article 11. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date

of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement. Done at.....on.....in two originals in the English language.

For the Government of the Kingdom of Sweden

For the Government of the Federal Democratic Republic of Ethiopia