

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND THE GOVERNMENT OF THE STATE OF QATAR FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Qatar (hereinafter jointly referred to as the "Contracting Parties" and separately as a "Contracting Party"),

Desiring to strengthen economic cooperation and seeking to promote, encourage and increase mutually beneficial investment opportunities that enhance sustainable development within the territories of both Contracting Parties;

Recognizing the important contribution of investments to the sustainable development of the Contracting Parties, particularly in the, increase of productive capacity, economic growth, the transfer of technology, and development of human capacity;

Desiring to promote corporate responsibilities and rights under international law.

HAVE AGREED as follows:

## **Article 1. DEFINITIONS**

For the purposes of this Agreement:

1. The term "Investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, and in particular, though not exclusively, shall include:

- a. movable and immovable property and other property rights;
- b. shares, stocks, debentures of a company or other similar forms of participation in a company;
- c. debt security of another enterprise;
- d. loans to an enterprise;
- e. claim to money or to any performance under contract having an economic value;
- f. intellectual property rights, such as, copyrights, trademarks, patents, technical processes, know-how and goodwill;
- g. rights of economic nature granted by law or agreement, such as concessions to performance activities including those to search for, process, extract and exploit natural resources.

2. For greater certainty, investment does not include:

1. Debt securities issued by a government or loans to a government;
2. Portfolio investments;
3. Claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of another Contracting Party, or the extension of credit in connection with a commercial transaction, or any other claims to money that do not involve the kind of interests set out in subparagraphs (a) through (g) above.

3. The term "enterprise" means:

- (a) any legal entity constituted, organized and operated under the applicable law of the Host State, that is for profit, whether privately or governmentally owned or controlled; and
- (b) having its management and real and substantial business operations in the territory of the Host State.
4. The term "expansion" refers to the definitions given in the Host State laws and regulations and/or an actual expansion of productive capacity as opposed to expansion via a merger or acquisition.
5. The term "investor" means any natural or legal person who makes and owns or controls an investment in the territory of the other Contracting Party.
- a) The term "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws, provided that a natural person who has dual nationality of either Contracting Party shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality.
- b) the term "Legal person", refers with regard to either Contracting Party, to any juridical person including enterprises, companies, corporations, firms or business associations constituted or organized under the applicable law of that Contracting Party and having its seat in the territory of that same Contracting Party, and whether privately or governmentally owned or. In addition, juridical persons include governments, official agencies, authorities, funds, foundations, trusts, and organizations established or organized in accordance with the respective state legislation of the Contracting Parties.
6. The concept of "substantial business activity" requires an overall examination, on a case-by-case basis, of all the circumstances, including, inter alia:
- (i) the amount of investment brought into the country;
- (ii) the number of jobs created;
- (iii) its effect on the local community; and
- (iv) the length of time the business has been in operation.
7. The term "portfolio investment" means investment that constitutes less than 10 per cent of the shares of the company or otherwise does not give the portfolio investor the possibility to exercise effective management or influence on the management of the investment.
8. The term "Returns" means any amount yielded by an investment and in particular, though not exclusively, includes profits, interest related to loans, capital gain, shares, dividends, royalties, and fees.
9. The term "measures" means any legal, administrative, judicial or policy instrument adopted by a Party, directly relating to, and affecting an investor or its investment in its territory, after this Agreement has come into effect, but does not include measures in draft form, or that have not come into effect.
10. The term "Home State" means the Party of which the Investor is a national or in which the Investor is organized, constituted or incorporated.
11. The term "Host State" means the Party where the Investment is located.
12. "Freely usable currency" means the currency that the International Monetary Fund [IMF] determines from time to time, as freely convertible currency in accordance with the Articles of the International Monetary Fund and any amendments thereto
13. The term "territory" means:
- a) in respect of the Federal Democratic Republic of Ethiopia: the territory of the Federal Democratic Republic of Ethiopia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.
- b) for the State of Qatar: land, inland waters and territorial of the State of Qatar and their bed and subsoil, and air space above them, and the economic zone and continental shelf, which is exercised by the State of Qatar's sovereign rights and jurisdiction, in accordance with the provisions of international law and domestic laws and regulations

## **Article 2. APPLICABILITY OF THIS AGREEMENT**

1. This Agreement shall apply to investments made by investors of either Contracting Party, admitted in accordance with its

laws, regulations and policies, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute raised before the entry into force of this Agreement.

2. This Agreement does not apply to government measures relating to taxation and immigration.

### **Article 3. PROMOTION AND PROTECTION OF INVESTMENTS**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. A Contracting Party shall accord investments of investors of the other Contracting Party protection and security no less favorable than that it accords to investments of its own investors or to investments of investors of any third state.

### **Article 4. FAIR ADMINISTRATIVE TREATMENT**

1. Each Contracting Party shall ensure that their administrative, legislative, and judicial processes do not operate in a manner that is arbitrary or that denies administrative and procedural due process to investors of the other State Party or their investments.

2. Investors or their investments, as required by circumstances, shall notified in a timely manner of administrative or judicial proceedings directly affecting the Investment(s), unless, due to exceptional circumstances, such notice is contrary to domestic law.

3. The Investor or their investments shall have access to government-held information in timely fashion in accordance with domestic law and subject to the limitation on access to information under the applicable domestic law.

4. Each Contracting Party will progressively strive to improve the transparency, efficiency, independence and accountability of their legislative, regulatory, administrative and judicial processes in accordance with their respective domestic laws and regulations.

### **Article 5. NATIONAL TREATMENT**

1. Each Contracting Party shall in its territory accord to investors and their investments of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments with respect to the management, conduct, operation, sale or other disposition of investments in its territory.

2. A breach of paragraph 1 of Article (4) will only occur if the challenged measure constitutes intentional and unlawful discrimination against the investment based on nationality.

3. The obligation referred to in paragraph 1 of this Article shall not apply to treatment accorded under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

### **Article 6. MOST-FAVOURED-NATION TREATMENT**

1. Each Contracting Party shall accord to investors of other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investors of any third State.

2. Each Contracting Party shall accord to investments made by investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances to investments of investors of any third State.

3. The Most-Favored-Nation Treatment provisions of this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic, or monetary union, a common market or a free trade area.

4. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

5. The obligation referred to in paragraph 1 and 2 above shall not apply to treatment accorded under multilateral or regional agreement related to trade, investment, or economic integration in which a state party is participating or may participate in the future.

## **Article 7. EXCEPTIONS TO MOST-FAVoured NATION**

1, Any non-discriminatory regulatory measure taken by a Contracting Party that is designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, does not constitute a breach of the most-favored nation treatment.

2. The measures taken by reason of national security, public interest, public health or morality are not considered as a "less favorable treatment", in the meaning of the most-favored nation provisions, provided that such measures are non-discriminatory.

3. The principle of non-discrimination in this Article does not apply in the following circumstances:

(a) to subsidies or grants provided to a government or a State enterprise, including government-supported loans, guarantees and insurance;

(b) to taxation measures aimed at ensuring the effective collection of taxes, except where this results in arbitrary discrimination;

## **Article 8. COMPENSATION FOR LOSSES**

1. When investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by the forces or authorities of the latter Contracting Party, or

(b) destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in a freely usable currency without undue delay.

## **Article 9. EXPROPRIATION**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except:

(a) in the public interest

(b) in accordance with due process of law;

(c) on payment of prompt and adequate compensation.

2. Compensation contemplated in paragraph 1(c) of this Article shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest at commercial rate from the date of expropriation until the date of payment, shall be made without undue delay, be effectively realizable and freely transferrable in a freely usable currency.

3. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party in which territory the investment has been made, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

4. Except in rare circumstances, non-discriminatory, proportionate regulatory actions made in a good faith by a Contracting Party that are designed and applied to protect or enhance legitimate public welfare objectives, such as national security, stability of financial institutions, public health, safety, and the environment, shall not constitute an indirect expropriation under this Agreement.

## **Article 10. TRANSFERS**

Each Contracting Party shall permit the free movement of output from all investment made by an investor of the other Contracting Party in its territory and guarantee all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred without delay. Such funds would include but not limited to:

1. prevailing at the date of transfer, unless otherwise agreed particular, though not exclusively:

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

(b) profits, interests, dividends and other current income;

(b) Returns;

(c) funds in repayment of loans;

(d) royalties or fees;

(e) proceeds from sale or liquidation of the investment;

(f) any payments resulting from compensation by virtue of Articles 7, or 8 or 17 of this Agreement;

(g) the unspent earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of a Contracting Party.

2. For the purpose of this Agreement, each Contracting Party shall allow transfers in paragraph 1 of this Article at market rate of exchange applicable on the date of the transfer.

3. Transfers shall be considered to have been made "without any undue delay" in the sense of paragraph (1) of this Article when they have been made within the period normally necessary for the completion of the transfer.

4. Each Contracting Party may delay or prevent for a specifically defined period the transfer of funds which are specifically subject to a judicial order in the following circumstances:

a. bankruptcy, insolvency or the protection of the rights of creditors;

b. issuing, trading or dealing in securities, futures, options, or derivatives;

c. there are an ongoing criminal proceedings relating to the operational activities of the investment;

d. noncompliance with tax payments or other mandatory legal charges required in the ordinary course of business;

Any action taken by a Contracting Party should be equitable, non-discriminatory, and in good faith taking into account the objectives of this Agreement.

## **Article 11. MEASURES TO SAFEGUARD BALANCE OF PAYMENTS**

1. In the event of serious balance of payments and external financial difficulties, a Contracting Party may adopt or maintain restrictions on investments, including payments or transfers related to such investments.

2. The restrictions referred to in Paragraph 1 shall:

a. not discriminate the other Contracting Party;

b. avoid unnecessary damage to the commercial, economic and financial interests of the other Contracting Party;

c. not exceed those necessary to deal with the circumstances described in Paragraph 1; d. be temporary and be phased out progressively.

## **Article 12. ENTRY AND SOJOURN OF PERSONNEL**

1. A Contracting Party may not require an investor, to appoint to senior management positions for its investment, individuals of any particular nationality.

2. Each Contracting Party shall, subject to its law relating to the entry and sojourn of non-citizens and based on reciprocity, permit natural persons of the other Contracting Party and personnel employed by the investor or investment to enter and remain in its territory for the purpose of engaging in activities connected only with investments.

## **Article 13. ESSENTIAL SECURITY INTERESTS**

1. The Contracting Party may take actions that it deems necessary for the protection of its essential security interest's related to;

- (a) criminal or penal offences related to the operational activities of the investment, or
- (b) traffic in arms, ammunition and implements of war and transaction in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military of other security establishment.
- (c) taken in time of war or other emergency in international relations; or
- (d) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
- (e) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices;

2. Any action taken by a Contracting Party should be equitable, non-discriminatory, and in good faith taking into account the objectives of this Agreement.

## **Article 14. ENVIRONMENTAL AND LABOUR ISSUES**

Investors and their investments shall comply with the labor and environment laws and regulations of the host contracting party with respect to management and operation of an investment.

## **Article 15. TRANSPARENCY OF INVESTMENT INFORMATION**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws and regulations of general application as well as international agreements that may affect the Investments of Investors of the other Contracting Party.
2. Each Contracting Party shall endeavor to promptly publish, or otherwise make publicly available, its policies and administrative guidelines or procedures that may affect investment under this Agreement.
3. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its domestic laws protecting confidentiality.
4. This Article shall not be subject to the Investor-State dispute settlement process.

## **Article 16. SETTLEMENT OF INVESTMENT DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an alleged breach of an obligation of the latter Contracting Party under this Agreement shall initially be subject to consultations and negotiations.

2. If any such dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within six (6) months from the date either Contracting Party to the dispute requested amicable settlement, the investor concerned may submit at his preference the dispute settlement to:

- a) the competent court of the host Contracting Party for decision; or
- b) the International Center for the Settlement of Investment disputes established under the Convention on the settlement of Investment disputes between States and Nationals of other States of March 18, 1965 done in Washington, D.C., if this Convention is applicable to the Contracting Parties; or
- c) an Ad Hoc Arbitral Tribunal.

3. The Arbitral Tribunal shall settle the dispute to conformity with the provisions of this Agreement, the principles of international law, and substantive domestic laws of the Contracting Party in the territory or when the investment is made

4. The Ad Hoc Arbitral Tribunal specified under paragraph (2) (c) shall be established as follows:

a) each Contracting Party to the dispute shall appoint one arbitrator within two months, and the two arbitrators thus appointed, shall select by mutual agreement a third arbitrator within one month. The selected arbitrators must be a citizen of a third country, and who shall act as the Chairman of the Tribunal. All the arbitrators may be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the dispute to arbitration.

b) if the periods specified in paragraph (3) (a) herein above have not been respected, either Party, in the absence of any of other agreement, shall invite the Secretary General, or Vice-Secretary General of the Permanent Court of Arbitration at The Hague to make the necessary appointments.

c) the Ad Hoc Arbitral Tribunal shall reach its decisions by a majority of vote. These decisions shall be final and legally binding upon the parties.

d) each party to the dispute shall bear the cost of its member in the Tribunal and the cost of its representation in the arbitral proceeding, the cost of the Chairman of the Tribunal and the remaining cost shall be borne in equal parts by the Contracting Parties to the dispute.

e) the Tribunal shall interpret its award and give reasons and bases of its decision at the request of either Party. Unless otherwise agreed by the Parties, the venue of arbitration shall be at the seat of the Permanent Court of Arbitration at The Hague (The Netherlands).

Subject to the above, the Tribunal shall follow the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL), 1976.

## **Article 17. SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through consultations or negotiations, which may include the use of non-binding third-party mediation or other mechanisms.

2. If the dispute cannot be thus settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the necessary appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointment.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall have the power to determine its own procedures.

## **Article 18. DENIAL OF BENEFITS**

1. An arbitral tribunal or a Contracting Party may deny the benefits of this Agreement to an investor and its investments if nationals of companies of a third party substantially own or control the investment and the denying Contracting Party adopts or maintains measures with respect to the third party that are related to international obligations concerning the maintenance of international peace and security and prohibit or restrict transactions with nationals or companies of this third party or that would be violated or circumvented if the benefits of this Agreement were accorded to the investor or to its investment.

2. An arbitral tribunal or a Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party or to an investment of that investor, if a national or company of a third party owns or controls the investment and the

investor and its investment has no substantial business activities in the territory of the Contracting Party under whose laws it is constituted or organized.

3. An arbitral tribunal or a Contracting Party shall deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor if the investor has not owned or controlled the investment at the time of the alleged breach of an obligation under this Agreement.

## **Article 19. More Favorable Provisions**

Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or other provisions of specific contract or investment authorization or agreement, is more favorable than that provided under this agreement, the most favorable treatment shall apply.

## **Article 20. CONSULTATIONS**

Up on request by either Contracting Parties, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement, and to exchange information on the impact that the laws, regulations, decisions, administrative practices, procedures or policies of the other Contracting Parties may have an effect on investments referred to in this Agreement.

## **Article 21. ENTRY INTO FORCE, DURATION, RENEGOTIATION AND TERMINATION**

This Agreement shall enter into force on the date on which the instruments of ratification are exchanged in accordance with the ratification processes. This Agreement shall remain in full force and effect for a period of ten (10) years from the date of entry into force. It shall remain in force until either Contracting Party notifies the other Contracting Party in writing through the diplomatic channels of the intention to renegotiate or terminate this Agreement. The notice of termination shall become effective one (1) year after the date of notification.

With respect to investments made prior to the date when the notice of termination of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Doha, State of Qatar on the 14th of November 2017 in three original versions, in Arabic, Amharic and English languages. All texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FITSUM AREGA

FOR THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

H.H. SHAIKH AHMED BIUN JASSIM AL-THANI

MINISTER OF ECONOMY AND TRADE

FOR THE GOVERNMENT OF THE THE STATE OF QATAR