

Treaty between the Federal Republic of Germany and the Empire of Ethiopia concerning the Promotion of Investments

THE FEDERAL REPUBLIC OF GERMANY and the EMPIRE OF ETHIOPIA,

DESIRING to intensify economic cooperation between both States,

INTENDING to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that contractual protection of all assets of nationals or companies of either Contracting Party in the territory of the other Contracting Party is apt to promote private investments and private business initiatives and to increase the prosperity of both nations,

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall in its territory promote as far as possible the investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation. Such investments shall enjoy the full protection of the present Treaty if made in accordance with such legislation. Each Contracting Party shall in any case accord such investments fair and equitable treatment.

Article 2.

Neither Contracting Party shall in its territory subject investments owned or controlled by nationals or companies of the other Contracting Party or any activities in connexion with such investments to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

Article 3.

1) Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against compensation. Such compensation shall represent the equivalent of the investment expropriated; it shall be actually realizable, freely transferable and shall be made without delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies 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 Party accords to its own nationals or companies, as regards restitution, indemnification, compensation or other valuable consideration.

(4) Nationals or companies 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 the present Article.

Article 4.

Either Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party

the free transfer of the capital, of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If either Contracting Party makes payment to any of its nationals or companies 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 from such national or company to the former Contracting Party as well as the subrogation of that Contracting Party to any such right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, paragraph 2 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situate, transfers under paragraph 2 of Article 3, under Article 4 or Article 5 shall be made without delay and at the rate of exchange for current transactions based on the par value agreed with the International Monetary Fund and within the margins above or below parity admitted under section 3 of Article IV of the Articles of Agreement of the International Monetary Fund and as effected on the day the transfer is made.

(2) If at the date of transfer no rate of exchange within the meaning of paragraph 1 above exists in respect of either Contracting Party, the official rate fixed by such Contracting Party for its currency in relation to the US Dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment is situate shall admit a rate of exchange that is fair and equitable.

Article 7.

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

(2) Either Contracting Party shall observe any other obligation it may enter into with nationals or companies of the other Contracting Party regarding investments in its territory by such nationals or companies.

Article 8.

(1) The term "investment" shall comprise all categories of assets.

(2) The term "returns" shall mean the amounts yielded by an investment for a definite period as profit or interest.

(3) The term "nationals" shall mean: a) in respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany; b) in respect of the Empire of Ethiopia: Ethiopians within the meaning of the Nationality Law of the Empire of Ethiopia.

(4) The term "companies" shall mean:

a) in respect of the Federal Republic of Germany: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

b) in respect of the Empire of Ethiopia: any business organisations, associations, cooperatives, chartered bodies or any other organisation whether commercial or not, with or without juridical personality having its head-office within the Empire of Ethiopia and as such existing by virtue of the laws of the Empire of Ethiopia.

Article 9.

The present Treaty shall apply to all investments made after April 21, 1964, by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

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

(3) Such arbitral tribunal shall be constituted for each individual case 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 notified the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

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

(5) The arbitral 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 counsel 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 may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11.

The provisions of the present Treaty shall remain in force also in the event of a conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations have been re-established.

Article 12.

With the exception of the provisions of paragraph 7 of the Protocol, referring to air transport, the present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Empire of Ethiopia within three months from the entry into force of the present Treaty.

Article 13.

(1) The present Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Treaty shall enter into force one month after the day of exchange of the instruments of ratification. It shall remain in force for a period of five years and shall continue in force thereafter for an unlimited period except if terminated in writing by either Contracting Party one year before its expiration. After the expiry of the period of five years the present Treaty may be terminated at any time by either Contracting Party by giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of Articles 1 to 12 shall continue to be effective for a further period of fifteen years from the date of termination of the present Treaty.

DONE at Addis Ababa on April 21, 1964, in six originals, two each in the German, Amharic and English languages, all six texts being authentic. In case of divergent interpretations of the German and Amharic texts, the English text shall prevail.

For the Federal Republic of Germany

C. v. Schubert

Dr. R. Baetzgen

For the Empire of Ethiopia

Mulatu Debebe

Protocol

On signing the Treaty concerning the Promotion of Investments, concluded between the Federal Republic of Germany and the Empire of Ethiopia, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Treaty:

(1). Ad Article 2

a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of Article 2: the management, maintenance, use, and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of Article 2: restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, impeding the marketing of products inside or 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 Article 2.

b) Article 2 shall not apply to entry, sojourn and activity as an employee.

(2). Ad Article 3

a) Expropriation shall mean the taking in whole or in part of any investment as well as the restricting of any investment the effect of which is tantamount to such taking.

b) The provisions of paragraph 2 of Article 3 shall also apply to the transfer of an investment to public ownership as well as to the subjection of an investment to public control or to similar interventions by public authorities the effect of which is tantamount to expropriation as defined in paragraph a) above.

(3). Ad Article 4

"Liquidation" within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

(4). Ad Articles 4 and 5

Either Contracting Party reserves the right to apply Articles 4 and 5 to a certain investment only after its prior express approval.

(5). Ad Article 6

A transfer shall be deemed to have been made "without delay" within the meaning of paragraph 1 of Article 6 if made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(6). Ad Article 8

a) Assets within the meaning of paragraph 1 of Article 8 shall comprise all categories of assets including all categories of rights and interests whether used in economically productive activities or not and shall include but not be limited to

(aa) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(bb) shares and other kinds of interests in companies;

(cc) any claim having an economic value;

(dd) copyrights, industrial property rights, technical processes, trade-names, and good will;

(ee) business concessions under public law, including concessions to search for, extract or exploit natural resources. Any alteration of the form in which assets are invested shall not affect their classification as investment.

b) Returns from an investment, as well as returns from re-invested returns, shall enjoy the same protection as the original investment.

c) Without prejudice to any other method of determining nationality, any person in possession of a national passport issued by the appropriate authorities of either Contracting Party shall be deemed to be a national of that Party.

(7).

Either Contracting Party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder sea-going vessels or aircrafts of the other Contracting Party from participating in the transport of goods intended for, or of persons travelling in connexion with, an investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State with funds of an enterprise in which capital within the meaning of the present Treaty is invested; it applies furthermore to persons travelling on behalf of such an enterprise.

DONE at Addis Ababa on April 21, 1964, in six originals, two each in the German, Amharic and English languages, all six texts being authentic. In case of divergent interpretations of the German and Amharic texts, the English text shall prevail. For the Federal Republic of Germany C. v. Schubert Dr. R. Baetzgen For the Empire of Ethiopia Mulatu Debebe

Exchange of Letters

The Delegation of the Government of the Empire of Ethiopia Addis Ababa,

April 21, 1964

Mr. Chairman,

With reference to the Treaty between the Empire of Ethiopia and the Federal Republic of Germany concerning the Promotion of Investments signed today I have the honour to inform you that the following understanding has been reached in the course of our negotiations:

An investment made before April 21, 1964, by a German national or company in Ethiopia shall enjoy the protection of the aforementioned Treaty provided that such investment has been expanded by an investment made after April 21, 1964, and provided that the Imperial Ethiopian Government has declared its approval to apply the aforementioned Treaty to the whole investment.

I should be grateful if you could kindly confirm the understanding set out above.

Accept, Mr. Chairman, the assurance of my highest consideration.

Mulatu Debebe

Dr. Rudolf Baetzgen,

Ministerialdirigent,

Head of the Delegation of the Government of the Federal Republic of Germany

The Delegation of the Government of the Federal Republic of Germany Addis Ababa,

April 21, 1964

Your Excellency,

I have the honour to acknowledge receipt of your letter dated April 21, 1964, which reads as follows:

"With reference to the Treaty between the Empire of Ethiopia and the Federal Republic of Germany concerning the Promotion of Investments signed today I have the honour to inform you that the following understanding has been reached in the course of our negotiations: An investment made before April 21, 1964, by a German national or company in Ethiopia shall enjoy the protection of the aforementioned Treaty provided that such investment has been expanded by an

investment made after April 21, 1964, and provided that the Imperial Ethiopian Government has declared its approval to apply the aforementioned Treaty to the whole investment. I should be grateful if you could kindly confirm the understanding set out above."

I have the honour to confirm the understanding set out above.

Accept, Your Excellency, the assurance of my highest consideration.

Dr. R. Baetzgen

His Excellency Ato Mulatu Debebe,

Head of the Delegation of the Government of the Empire of Ethiopia

The Delegation of the Government of the Empire of Ethiopia Addis Ababa,

April 21, 1964

Mr. Chairman,

With reference to the Treaty between the Empire of Ethiopia and the Federal Republic of Germany concerning the Promotion of Investments signed today I have the honour to inform you that the following understanding has been reached in the course of our negotiations:

For the purpose of promoting investments by German nationals or companies in the territory of the Empire of Ethiopia, the Empire of Ethiopia will grant in accordance with its laws the necessary permits to German nationals whose training or experience is specially required by an investment and who desire to enter and stay in the Empire of Ethiopia to carry on activities in connexion with such investment, except as reasons of public order and security, of public health or morality may warrant otherwise.

I should be grateful if you could kindly confirm the understanding set out above.

Accept, Mr. Chairman, the assurance of my highest consideration.

Mulatu Debebe

Dr. Rudolf Baetzgen,

Ministerialdirigent,

Head of the Delegation of the Government of the Federal Republic of Germany

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Dr. R. Baetzgen

His Excellency Ato Mulatu Debebe,

Head of the Delegation of the Government of the Empire of Ethiopia

The Delegation of the Government of the Empire of Ethiopia Addis Ababa,

April 21, 1964

Mr. Chairman,

With reference to the Treaty between the Empire of Ethiopia and the Federal Republic of Germany concerning the Promotion of Investments signed today I have the honour to inform you that the following understanding has been reached in the course of our negotiations:

The Empire of Ethiopia herewith makes use of the right provided for in paragraph 4 of the Protocol and Articles 4 and 5 to apply Articles 4 and 5 to an investment of German nationals or companies in the Empire of Ethiopia only after the prior express approval of the Imperial Ethiopian Government in each individual case. Accordingly, Articles 4 and 5 shall apply to such investments only after the Imperial Ethiopian Government, upon application by a German national or company, has communicated to the Government of the Federal Republic of Germany its approval of the investment concerned. Returns from an investment, as well as returns from re-invested returns, shall enjoy the same treatment as the original investment with respect to the application of the Articles 4 and 5, if not excluded in the instrument of the approval of the original investment. In all other cases the following minimum transfers shall be guaranteed by the Empire of Ethiopia:

- a) transfer of returns to the extent of annually five per cent of the value of the investment as at the date of the transfer;
- b) transfer, in the event of liquidation, of annually ten per cent of the liquidation proceeds, provided that the German national or company has notified the investment to the Imperial Ethiopian Government and that the application of the foregoing guaranteed minimum transfers has been confirmed by it.

I should be grateful if you could kindly confirm the understanding set out above.

Accept, Mr. Chairman, the assurance of my highest consideration.

Mulatu Debebe

Vice-Minister Head of the Delegation of the Government of the Empire of Ethiopia

Dr. Rudolf Baetzgen, Ministerialdirigent,

Head of the Delegation of the Government of the Federal Republic of Germany

The Delegation of the Government of the Federal Republic of Germany

Addis Ababa, April 21, 1964

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- a) transfer of returns to the extent of annually five per cent of the value of the investment as at the date of the transfer;
- b) transfer, in the event of liquidation, of annually ten per cent of the liquidation proceeds, provided that the German national or company has notified the investment to the Imperial Ethiopian Government and that the application of the foregoing guaranteed minimum transfers has been confirmed by it.

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Dr. R. Baetzgen

His Excellency Ato Mulatu Debebe,

Head of the Delegation of the Government of the Empire of Ethiopia