COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA REVISED INVESTMENT AGREEMENT FOR THE COMESA COMMON INVESTMENT AREA (CCIA)

INVESTMENT AGREEMENT FOR THE COMESA COMMON INVESTMENT AREA

PREAMBLE

The Governments of Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Kingdom of eSwatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe, Member States of the Common Market for Eastern and Southern Africa (COMESA);

REAFFIRMING the importance of having sustainable economic growth and development in all Member States and the region, including through joint efforts in liberalising and promoting intra-COMESA trade and investment flows;

RECALLING the decision of the Third COMESA Summit of the Authority held on 29 June 1998 in Kinshasa, Democratic Republic of Congo, to establish the COMESA Common Investment Area (hereinafter referred to as "CCIA"), in order to enhance COMESA's attractiveness and competitiveness for promoting foreign direct and cross border investments;

RECALLING the establishment of the COMESA Free Trade Area (FTA) on 31st October 2000 and recognising that direct investment is an important source of finance for sustaining the pace of economic, industrial, infrastructure and technology development; hence, the need to attract higher and sustainable level of direct investment flows in COMESA;

RECALLING that the Member States have agreed under paragraph 1 of Article 159 of the Treaty Establishing COMESA to encourage and facilitate private investment flows into COMESA;

RECOGNISING that particular pressures on the balance of payments of a Member State in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;

UNDERSTANDING that this Agreement is designed to recognise the right of Member States to regulate and to introduce new measures relating to investments in their territories in order to meet national public policy objectives;

DETERMINED to realise the vision of COMESA to establish a competitive COMESA Common Investment Area through a more liberal and transparent investment environment; and

BEARING IN MIND that the measures agreed upon shall contribute towards the realisation of the Common Market and the achievement of sustainable development in the region.

HAVE AGREED AS FOLLOWS:

Part One. PRELIMINARY PROVISIONS

Article 1. Definitions

In this Agreement, unless context otherwise requires:

“Agreement” means the Investment Agreement for the COMESA Common Investment Area;

“CCIA” means the area that covers the whole of the territories of Member States of COMESA as defined by their respective legislation;

“CCIA Committee” means the Committee referred to under Article 7 of this Agreement;

“COMESA” means the Common Market for Eastern and Southern Africa established under Article 1 of the COMESA Treaty;

"COMESA investor" means:

(i) a natural person of a Member State; or

(ii) a juridical person of a Member State,

making an investment in another Member State, in accordance with the laws and regulations of the Member State in which the investment is made.

For purposes of the definition of COMESA investor:

(i) “Natural person” means a person having citizenship of a Member State in accordance with its applicable laws and regulations; and

(ii) "Juridical person" means any legal entity duly constituted or otherwise organised under the applicable laws and regulations of a Member State provided that a juridical person owned or controlled by foreign nationals shall not qualify as a COMESA investor unless it maintains substantial business activity in the Member State in which it is duly constituted or organised;

“COMESA Treaty” means the Treaty establishing the Common Market for Eastern and Southern Africa;

“Council” means the Council of Ministers of COMESA as established under Article 7 of the COMESA Treaty;

“economic activities” means all economic activities of the economy, including services, where investment, as defined in this Article, is taking place;

“enterprise or company” means any entity duly constituted or otherwise incorporated under the applicable laws and regulations of a Member State provided that it maintains substantial business activity in the Member State inwhich it is located;

“freely convertible currency” means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in regional or international foreign exchange markets;

“home state” means, a State from where the COMESA investor originates;

“host state” means the Member State where the investment is located;

“investment” means an enterprise or a company, which is established, acquired or expanded by an investor, including through the constitution, maintenance or acquisition of shares, debentures or other ownership instruments of such an enterprise, provided that the enterprise or company is established or acquired in accordance with the laws of the Member State. In order to qualify as an investment under this Agreement the investment must have the following characteristics: the substantial business activity, commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and significance for the host State’s development but does not include;

(a) debt securities issued by a government or loans to a government;

(b) portfolio investments;

(c) 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 Member State to an enterprise in the territory of another Member State, a bank letter of credit or an extension of credit in connection with a commercial transaction, such as trade financing;

(d) investments of a speculative nature, such as futures, swaps, forwards and derivatives;

“LIBOR” means London Interbank Offered Rate ;

"measures" means any legal, administrative, judicial or policy decision that is taken by a Member State, directly relating to and affecting an investment in its territory, after this Agreement has come into effect;

“Member State” means a Member State of COMESA that has ratified or acceded to this Agreement;

“returns” mean the amount yielded by an investment and in particular, though not exclusively, includes dividends, profit, interest, capital gains or other equivalent charges, royalties and other payments deriving from licenses, franchises, concessions and other similar rights; and

“Substantial business activity” requires an overall examination, on a case-by-case basis, of all the circumstances, including, inter alia:

(a) the amount of investment brought into the country;

(b) the number of jobs created;

(c) its effect on the local community; and

(d) the length of time the business has been in operation

Part Two. GENERAL PROVISIONS

Article 2. Objective

The parties to this agreement hereby designate the COMESA region as a common investment area with the following objectives:

(a) promote investments that support sustainable development in Member States;

(b) encourage the gradual elimination of investment restrictions and conditions, which may impede investment flows and the operation of investment projects in COMESA and promote a more transparent investment environment;

(c) provide COMESA investors, in the conduct of their business, with an overall balance of rights and obligations between investors and Member States, in accordance with this Agreement;

(d) strengthen and increase the competitiveness of COMESA?s economic activities; and

(e) promote COMESA as an attractive investment area.

Article 3. Coverage

1. This Agreement shall only apply to investments of COMESA investors that have been registered by relevant authority of the host State as listed in Schedule IV, and in accordance with the relevant procedures of the host state.

2. Subject to paragraph 1 of this Article, this Agreement shall cover investments of COMESA investors made in the territory of Member States in accordance with their laws and regulations prior to or after entry into force of this Agreement.

3. This Agreement shall not be applicable to claims arising out of any measures, which occurred or were taken prior to entry into force of the Agreement.

Article 4. Transparency

1. Each Member State shall make available to the CCIA Committee relevant measures, which pertain to, or affect, the operation of this Agreement. This shall also apply to international agreements pertaining to or affecting investment to which a Member State is also a signatory.

2. Each Member State shall publish relevant measures, which pertain to, or affect, the operation of this Agreement.

3. Each Member State shall, within 30 days of the enactment or the introduction of any new measure or any changes in existing measures, which affect investments or its commitments under this Agreement, inform the CCIA Committee and the general public.

4. Nothing in this Agreement shall require any Member State to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 5. General Obligations

To realize the objectives referred to in Article 2, the Member States shall:

(a) undertake appropriate actions to promote transparency and consistency in the application and interpretation of their investment laws, regulations and administrative procedures;

(b) strengthen the process of facilitation, promotion and liberalisation which would contribute continuously and significantly to achieving the objective of a more liberal and transparent investment environment;

(c) take appropriate actions to enhance the attractiveness of their investment environment for direct investment flows;

(d) promote, maintain and encourage competition to enhance economic efficiency in investment and consumer protection;

(e) prohibit any anti-competitive investment conduct that prevents, restricts or distorts competition at the national and regional levels;

(f) not waive or otherwise derogate from or offer to waive or otherwise derogate from measures concerning labour, public health, safety or the environment as an encouragement for the establishment, expansion or retention of investments;

(g) develop national policies to guide investors in developing human capacity of the labour force. Such policy may include incentives to encourage employers to invest in training, capacity building and knowledge transfer;

(h) develop national policies that pay particular attention to special needs of youth, women, persons with disabilities and other vulnerable groups;

(i) take measures to protect the health, safety and economic interests of consumers and their right to information, education and to organize themselves in order to safeguard their interests; and

(j) take such reasonable actions as may be available to them to ensure observance of the provisions of this Agreement by the regional and local government authorities within their territories.

Article 6. International Multilateral Agreements

Member States are encouraged, where appropriate, to endeavour to accede to the following multilateral agreements designed to promote, facilitate and protect investment:

(a) the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(b) the International Convention on Settlement of Investment Disputes between States and Nationals of other States;

(c) the Convention Establishing the Multilateral Investment Guarantee Agency;

(d) the Agreement Establishing the African Trade Insurance Agency; and

(e) any other multilateral agreement designed to promote or protect investment.

Article 7. Institutional Arrangements

1. The following COMESA Organs shall be responsible for administering this Agreement:

(a) Ministers responsible for investment of each Member State, or cabinet representatives,

which for the purposes of this Agreement, shall be known as the COMESA Common Investment Area Committee ("CCIA Committee"); and

(b) the Technical Committee on Investment composed of senior officials from Ministries responsible for investment and Chief Executives of Investment Promotion Agencies as may be designated by each Member State, which for the purposes of this Agreement, shall be known as the Technical Committee on Investment (TCI).

2. The CCIA Committee shall be responsible for:

(a) overall supervision of the implementation of this Agreement;

(b) making decisions or issuing directions that may require to be made under this Agreement;

(c) recommending to the Council any review of this Agreement when necessary;

(d) making recommendations to the Council on any policy issues that need to be made to enhance the objectives of this Agreement. For example the development of common minimum standards relating to investment in areas such as:

(i) environmental impact and social impact assessments;

(ii) labour standards;

(iii) respect for human rights;

(iv) conduct in conflict zones;

(v) corruption; and

(vi) subsidies and incentives; and

(e) conducting a review of the effectiveness of this Agreement and its implementation in the light of its objectives four years after its entry into force and every four years thereafter.

3. The Technical Committee shall be responsible for:

(a) advising on the technical aspects of the Agreement;

(b) submitting its reports and recommendations to the CCIA Committee, either on its own initiative or upon the request of the CCIA Committee, concerning the implementation of the provisions of this Agreement;

(c) preparation and development of action plans for the implementation of this Agreement; and

(d) carrying out such other functions as are assigned to it by or under this Agreement.

4. The COMESA Secretariat shall provide secretarial services to the institutions described in paragraph 1 of this Article.

5. The head of the COMESA Regional Investment Agency or his/her representative shall participate in all the meetings of the organs described under paragraph 1 as an ex-officio member.

6. Subject to this Agreement and any directions given by Council, the CCIA Committee and the TCI shall meet as often as necessary for the proper discharge of their functions and shall determine their own Rules of Procedure.

Article 8. Implementing Programmes and Action Plans

1. Member States shall, for purpose of the implementation of the obligations under this Agreement, undertake the joint development and implementation of the following programmes:

(a) co-operation and facilitation programme as specified in Schedule I annexed hereto;

(b) promotion and awareness programme as specified in Schedule II annexed hereto;

2. Member States shall submit action plans for the implementation of programmes mentioned in paragraph 1 to the CCIA Committee within a year of ratifying or acceding to this Agreement.

3. The Action Plans shall be reviewed by the CCIA Committee every two years to ensure that the objectives of this Agreement are achieved.

Article 9. Liberalisation Programme

1.The parties shall adopt a liberalisation programme, whereby they shall:

(a) unilaterally reduce and eliminate restrictive investment measures and review their investment regimes regularly towards further liberalization. In this context, Member States may undertake actions to liberalise, among others:

(i) rules, regulations and policies relating to investment;

(ii) rules on licensing conditions;

(iii) rules relating to access to domestic finance; and

(iv) rules to facilitate payment, receipts and repatriation of profits by investors;

(b) undertake individual action plans to:

(i) open up all industries for investment to COMESA investors in accordance with the provisions of this Agreement; and

(ii) extend national treatment to all COMESA investors in accordance with the provisions of this Agreement; and

(c) promote free flow of capital, skilled labour, professionals and technology among COMESA Member States.

2. The liberalisation programme under paragraph 1 shall be implemented in a manner to be determined by the parties.

Article 10. Relation to Dispute Settlement

No recourse to dispute settlement shall be initiated for any matter relating to Part Two of this Agreement.

Part Three. STANDARD OF TREATMENT OF INVESTORS AND INVESTMENTS

Article 11. Admission

Each Member State shall promote, encourage and facilitate investments in its territory, and admit such investments in accordance with its laws and regulations.

Article 12. Encouragement and Support of Investments

Member States may introduce incentives in order to attract investments. Such incentives may include:

(a) financial incentives in the forms of investment insurance, grants or loans at concessionary rates;

(b) fiscal incentives such as tax holidays, pioneer status and reduced tax rates;

(c) subsidized infrastructure or services, market preferences;

(d) development-oriented incentives, to encourage preferential markets schemes and specific investors within the region;

(e) incentives for technical assistance or technology transfer requirements; or

(f) investment guarantees.

Article 13. Support to Domestic Investors

Notwithstanding any other provision of this Agreement, Member States may support the development of local and regional industries that provide, inter alia, up-stream and down-stream linkages and have a favourable effect on attracting investments and generating increased employment in Member States. The support covered by this paragraph include:

(a) measures to grant preferential treatment to any qualifying enterprise under the domestic law of a Member State in order to achieve national or regional development goals;

(b) measures to support the development of local entrepreneurs;

(c) measures to enhance productive capacity, increase employment, increase human resource capacity, research and development including, new technology, technology transfer, innovation and other benefits of investment through the use of specified requirements on investors; or

(d) measures to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups.

Article 14. Fair Judicial and Administrative Treatment

1. Member States shall ensure that investments of investors of another Member State are not subjected to measures that constitute:

(a) denial of justice in criminal, civil or administrative proceedings;

(b) un-remedied and egregious violations of due process;

(c) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or

(d) manifestly abusive treatment, such as coercion, duress and harassment.

2. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 15. Transfer of Assets

1. Taking account of the need to facilitate, promote and enhance the movement of capital in the CCIA, Member States shall accord to COMESA investors the right to freely and without any inordinate delay, and according to their laws and regulations:

(a) repatriate investment returns;

(b) repatriate funds for repayment of loans;

(c) repatriate proceeds from compensation upon expropriation, the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;

(d) transfer payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well as replacing capital assets; and

(e) remit the unspent earnings of expatriate staff of the investment project.

2. Notwithstanding provision in paragraph 1, a Member State may delay or prevent a transfer in a non-discriminatory manner and in good faith application of its laws relating to:

(a) fulfilment of tax obligations to the host state;

(b) bankruptcy, insolvency, or the protection of the rights of creditors;

(c) issuing, trading or dealing in securities, futures, options or derivatives;

(d) criminal or penal offences and the recovery of the proceeds of crime;

(e) financial reporting or record keeping of transactions when necessary to assist law enforcement or financial regulatory authorities;

(f) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(g) social security, public retirement or compulsory savings schemes;

(h) severance entitlements of employees; or

(i) the formalities required to register and satisfy the central bank and other relevant authority of a host state.

Article 16. Movement of Labour

Taking account of the need to facilitate labour resources, in the CCIA and subject to the laws in force in the host state, Member States shall accord to investors the right to hire technically qualified persons, necessary for investment from any Member State. Such persons shall have the right to enter and receive the necessary authorisations to reside in the Member State. However, COMESA investors shall accord a priority to workers who possess the same qualifications or expertise and are available in the host Member State or any other Member State.

Article 17. National Treatment

1. Subject to Article 19, each Member State shall accord to COMESA investors and their investments treatment no less favourable than the treatment it accords, in like circumstance, to its own investors and to their investments with respect to the management, operation and disposition of investments in its territory.

2. For greater certainty, references to ?like circumstances? in paragraph 1 of this Article requires an overall examination on a case by case basis of all the circumstances of an investment including, inter alia:

(a) its effects on third persons and the local community;

(b) its effects on the local, regional or national environment, including the cumulative effects of all investments within a jurisdiction on the environment;

(c) the sector the investor is in;

(d) the aim of the measure concerned;

(e) the regulatory process generally applied in relation to the measure concerned; or

(f) other factors directly relating to the investment or investor in relation to the measure concerned, and the examination shall not be limited to or be biased towards any one factor.

Article 18. Most Favoured Nation Treatment

1. Subject to the exceptions provided for under paragraph 3 of this Article, each Member State shall accord to COMESA investors and their investments treatment no less favourable than that it accords, in like circumstances, to investors and their investments from any third country with respect to the management, operation and disposition of investments in its territory. This paragraph shall not apply to investment agreements entered into by Member States with non-Member States prior to the entry into force of this Agreement.

2. For greater certainty, references to "like circumstances? in paragraph 1 of this Article requires an overall examination on a case by case basis of all the circumstances of an investment including, inter alia:

(a) its effects on third persons and the local community;

(b) its effects on the local, regional or national environment, including the cumulative effects of all investments within a jurisdiction on the environment;

(c) the sector the investor is in;

(d) the aim of the measure concerned;

(e) the regulatory process generally applied in relation to the measure concerned; or

(f) other factors directly relating to the investment or investor in relation to the measure concerned, and the examination shall not be limited to or be biased towards any one factor.

3. Nothing in paragraph 1 of this Article shall oblige a Member State to extend to COMESA investors the benefits of any treatment, preference or privilege resulting from:

(a) any customs union, free trade area, common market or monetary union, or any similar international convention or other forms of regional preferential arrangements, present or future, of which any of the Member States is or may become a party;

(b) any matter, including international agreements, pertaining wholly or mainly to taxation;

(c) any other international agreements, or chapters of international agreements, pertaining to the promotion or protection of investment; or

(d) any dispute settlement procedures in any other treaty.

Article 19. Specific Exceptions

1. Articles 17 and 18 shall not apply to:

(a) any measures existing at the date of entry into force of this Agreement maintained by each Member State under its laws and regulations or any amendment or modification to such measures, provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification;

(b) privileges available within the Member State's economy made for the exclusive benefit of its own nationals within the framework of its national development programmes;

(c) subsidies, incentives under Article 12 or grants provided by a government or a state enterprise, including government-supported loans, guaranties and insurance; or

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

2. Notwithstanding any other provision of this Agreement, a Member State may take measures necessary to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups prior to the signing of this Agreement.

3. The implementation of these exceptions shall not entitle any investor or investment to compensation for any competitive disadvantages he may suffer.

4. For greater certainty, non-discriminatory measures taken by a Member State to comply with its international obligations under other treaties shall not constitute a breach of this Agreement.

Article 20. Expropriation

1. Member States shall not nationalize or expropriate investments in their territory or adopt any other measures tantamount to expropriation of investments except:

(a) in the public interest; and

(b) in accordance with due process of law.

2. Where expropriation has been carried out, prompt and adequate compensation shall be paid.

3. Adequate compensation shall normally be assessed in relation to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation") and shall not reflect any change in value occurring because the intended expropriation had become known earlier. However, where appropriate, the assessment of fair and adequate compensation shall be based on an equitable balance between the adequate compensation shall be based on an equitable balance between the public interest and interest of those affected, having regard for all relevant circumstances and taking account of the current and past use of the property, the history of its acquisition, the fair market value of the investment, the purpose of the expropriation, the extent of previous profit made by the foreign investor through the investment, and the duration of the investment. Compensation may be adjusted to reflect the aggravating conduct by a COMESA investor or such conduct that does not seek to mitigate damages.

4. If payment is made in a currency of the host or home state, compensation shall include simple interest at the 6-month average U.S. dollar LIBOR rate from the date of expropriation until the date of actual payment.

5. If a Member State elects to pay in a currency other than a host or home state currency, the amount paid on the date of payment, if converted into a host or home state currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that host or home state currency at the market rate of exchange prevailing on that date, and simple interest had accrued at the 6-month average U.S. dollar LIBOR rate from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable. Awards that are significantly burdensome on a host state may be paid yearly over a period agreed by the Parties, subject to interest at the rate established by agreement of the disputants or by a tribunal. Where the Parties do not agree on a specific period, the matter shall be referred to a competent tribunal to determine the period within which the award shall be paid.

7. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international agreements on intellectual property.

8. A measure of general application shall not be considered an expropriation of a debt security or loan covered by this Agreement solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

8. Bona fide regulatory measures taken by a Member State or awards by judicial bodies of a Member State that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, shall not constitute an expropriation or measures tantamount to expropriation under this Article.

9. The investor affected by the expropriation shall have a right under the law of the Member State making the expropriation, to a review by a juridical or other independent authority of that Member State, of his/its case and the valuation of his/its investment in accordance with the principles set out in paragraphs (1) to (8) of this Article. The Member State making the expropriation shall ensure that such a review is carried out promptly.

10. The Parties confirm their shared understanding that:

(a) expropriation may be direct or indirect:

(i) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(ii) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially or permanently deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure; and

(b) the determination of whether a measure or a series of measures have an effect equivalent to expropriation requires a case-by-case, fact-based inquiry, that takes into consideration:

(i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(ii) the duration of the measure or series of measures of a Party;

(iii) the character of the measure or series of measures, notably their object, context and intent; and

(iv) whether a measure by a Party breaches the Party's prior binding written commitment to the investor whether by contract, licence or other legal document.

Article 21. Compensation for Losses

1. COMESA investors whose investments in the territory of the Member States suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which Member States accord to their own investors or to investors of any third State. Resulting payments shall be freely transferable at the exchange rate applicable on the date of transfer pursuant to the exchange regulations in force.

2. Without derogating from the provisions of paragraph (1) of this Article, any investor who, in any of the situations referred to in that paragraph, suffers losses in a Member State resulting from:

(a) requisitioning of their property by the forces or authorities of the Member States, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; or

(b) destruction of their property by the forces or authorities of the Member States, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

shall be accorded restitution, or adequate compensation not less favourable than that which the Member States accord to their own investors or to investors of any third State.

3. For the purposes of this Article, state of emergency excludes natural disaster.

Article 22. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors where like conditions prevail, or a disguised restriction on investment flows, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures designed and applied to protect or enhance legitimate public welfare objectives such as:

(a) national security and public morals;

(b) human, animal or plant life or health;

(c) environment; or

(d) public health and safety.

2. Nothing in this Agreement shall be construed to:

(a) preclude a Member State from applying measures that it considers necessary for the fulfilment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security;

(b) preclude a Member State from applying measures that it considers necessary for the protection of its own national

security interests; or

(c) require a Member State to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests.

3. A Member State reserves the right to deny an investor the benefits of this Agreement, and to grant special and differential treatment to any investor and investment in such cases, where the investor is engaged in activities inimical to the economic and security interest of the Member State.

Article 23. Taxation

1. This Agreement shall not apply to taxation measures except as provided for in paragraph 3 of this Article.

2. Member States, with a view to encouraging cross-border investments, may conclude between themselves double taxation avoidance agreements.

3. Noting in this Article prevent an investor from claiming that a taxation measure by a Member State is tantamount to an expropriation of investment that contravenes Article 20.

4. Where an investor makes a claim under paragraph 3, that investor shall refer the matter to the Secretary General who shall use his good offices with a view to assisting the Member State and the investor to reach to an amicable solution.

5. Where, within 6 months of a referral under paragraph 4, no amicable solution has been reached, the investor may refer the matter to arbitration in the manner provided for under this Agreement.

Article 24. Measures to Safeguard Balance of Payments

1. In the event of serious balance of payment and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on investments on which it has undertaken commitments provided for in Articles 15, 17, 19 and 20, including on payments or transfers for transactions related to such commitments.

2. Where measures to safeguard balance of payments are taken pursuant to this Article, notice of such measures shall be given to the CCIA Committee within 14 days from the date such measures are taken.

3. The measures referred to in paragraph 1 shall:

(a) not discriminate among Member States;

(b) be consistent with Article VIII of the Agreement of the International Monetary Fund;

(c) avoid unnecessary damage to the commercial, economic and financial interests of any other Member State;

(d) not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

4. A Member State adopting the balance of payment measures shall commence consultations with Member States through the CCIA Committee within 90 days from the date of notification in order to review the balance of payment measures adopted by it.

5. The CCIA Committee shall determine the rules applicable to the procedures under this Article.

Part Four. INVESTOR AND INVESTMENT OBLIGATIONS

Article 25. Compliance with Domestic Laws

COMESA investors and their investments shall comply with all applicable domestic laws and measures of the host state.

Article 26. Framework for Corporate Governance

1. COMESA Investors and their investments shall meet or exceed national and internationally accepted standards of corporate governance for the sector involved, in particular for transparency and accounting practices. In this regard, Member States, public bodies and companies are encouraged to improve the legal, institutional and regulatory framework

for corporate governance that result from the separation of ownership and control and any other issues relevant to a company's decision-making process, such as environmental or ethical concerns, as set forth in this Agreement.

2. COMESA Investors and their investments shall ensure that all transactions with related or affiliated companies shall be arm's length transactions at fair market price. Investors and their investments shall not undertake any transfer pricing practices between themselves or any other related or affiliated companies.

3. COMESA Investors and their investments shall, in accordance with domestic laws and regulations:

(a) ensure the equitable treatment of all shareholders, in accordance with national laws;

(b) encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises;

(c) ensure that timely and accurate disclosure is made on all material matters regarding a corporation, including the financial situation, performance, ownership, and governance of the company, risks related to environmental liabilities, and any other matters in accordance with the relevant regulations and requirements; and

(d) provide information relating to human resource policies, such as programs for human resource development.

Article 27. Socio-political Obligations

1. COMESA Investors and their investments shall adhere to socio-political obligations including, but not exclusively, the following:

(a) respect for national sovereignty and observance of domestic laws, regulations and administrative practices;

(b) respect for socio-cultural values;

(c) non-interference with internal political affairs; and

(d) non-interference with intergovernmental relations.

2. COMESA Investors and their investments shall refrain from influencing the appointment of persons to public office or finance political parties.

3. COMESA Investors and their investments shall refrain from all acts that may be prejudicial to public order, morals or to the public interest. The investor shall also to refrain from exercising restrictive practices and from trying to achieve gains through unlawful means.

Article 28. Bribery and Corruption

1. COMESA Investors and their investments shall not offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of a Member State, or to an official's relative or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favour in relation to a proposed investment or any other rights in relation to an investment.

2. COMESA Investors and their investments shall also not be complicit in any act described in paragraph 1 of this Article, including through incitement, aiding and abetting or conspiracy to commit or authorize such acts.

3. Member States shall adopt such legislative and other measures as may be necessary to establish jurisdiction and enforce laws and procedures against any criminal offence committed in whole or in part in their territory by a national, or a COMESA investor and investment or its agent, or by any other person acting in relation to an investment in a Member State.

4. A breach of this article by a COMESA investor or its investment is deemed to constitute a breach of the domestic law of the Host State concerning the establishment and operation of an investment.

Article 29. Business Ethics and Human Rights

1. COMESA investors and their investments shall observe the United Nations Guiding Principles on Business and Human Rights with modifications necessary for local circumstances.

2. COMESA investors and investments shall among others:

(a) support and respect the protection of internationally proclaimed human rights;

(b) ensure that they are not complicit in human rights abuses;

(c) uphold the freedom of association and the effective recognition of the right to collective bargaining;

(d) eliminate all forms of forced and compulsory labour, including the effective abolition of child labour; and

(e) eliminate discrimination in respect of employment and occupation.

Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, COMESA investors should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Article 30. Corporate Social Responsibility

1. In pursuit of their economic objectives, COMESA investors and their investments shall proceed in ways that do not conflict with the social and economic development of host countries. Investors shall be sensitive to changes in the social and economic goals of the host countries.

2. Investors and their investments should act in accordance with fair business, marketing and advertising practices when dealing with consumers and should ensure the safety and quality of goods and services they provide.

Article 31. Environmental Protection and Social Impact Assessment

1. COMESA Investors and their investments shall, in performing their activities, protect the environment and where such activity causes damages to the environment; take reasonable steps to restore it as far as possible, and to ensure fair compensation is paid to those impacted by the environmental damages.

2. COMESA Investors or their investments shall comply with environmental and social assessment screening criteria and assessment processes applicable to their proposed investments prior to their establishment, as required by the laws of the host state for such an investment.

3. The impact assessments required under paragraph 2 shall include assessments of the impacts on the human rights of the persons in the areas potentially impacted by the investment.

4. COMESA Investors or their investments shall make the environmental and social impact assessments:

(a) public; and

(b) accessible to the local communities, or other areas with potentially affected interests, in an effective and sufficiently timely manner so as to allow comments to be made to the investor, investment and/or government prior to the completion of the host state processes for establishing an investment.

5. COMESA Investors, their investments and the host state authorities shall apply the precautionary principle to their environmental impact assessment and to decisions taken in relation to a proposed investment, including any necessary mitigating or alternative approaches to the investment, or precluding the investment if necessary. The application of the precautionary principle by investors and investments shall be described in the environmental impact assessment.

Article 32. Environmental Management and Improvement

1. COMESA investments shall, in keeping with good practice requirements relating to the size and nature of the investment, and as required under the domestic laws, maintain an environmental management system consistent with recognized international environmental management standards and good business practice standards.

2. Emergency response and decommissioning plans shall be included, and regularly reviewed and updated in the environmental management system process, and made accessible to the host state and the public.

3. A closure fund to ensure that resources are available to implement the decommissioning plan shall be established and maintained by the Investor or its Investment in accordance with good industry practice for such funds.

4. Environmental management plans shall include provision for the continued improvement of environmental management technologies and practices over the life of the Investment. Such improvements shall be consistent with applicable laws, but shall strive to exceed legally applicable standards and always maintain high levels of environmental performance consistent

with best industry practice.

Article 33. Implications of Breach of Investors' Obligations

Without prejudice to other rights and remedies of a host state or its population, a host state may initiate a proceeding against a COMESA investor or its investment in the courts of the host state for breaches of its obligations under this Agreement. By specific written agreement, the disputing parties may submit the dispute to an arbitral tribunal in accordance with Article 36.

Part Five. DISPUTE SETTLEMENT

Article 34. Negotiation and Mediation

1. In the event that a dispute arises from the interpretation or application of this Agreement between Member States, or between a Member State and a COMESA investor, the party wishing to raise the dispute shall issue a notice of intention to initiate a claim under the dispute resolution process provided for under Articles 35 or 36 under this Agreement to the other potential disputing party ("notice of intention").

2. For the purposes of this Agreement, there shall be the minimum of a six-month cooling-off period between the date of a notice of intention under this Agreement ("the cooling-off period"), and the date a party may formally initiate a dispute under Articles 35 or 36.

3. The parties shall seek to resolve potential disputes through amicable means, both prior to and during the cooling-off period.

4. Where amicable means fail, the disputing parties shall seek the assistance of a mediator to resolve disputes during the cooling-off period required under this Agreement between the notice of intention and the initiation of dispute settlement proceedings under Articles 35 or 36. The potential disputants shall use a mediator from the list established by the COMESA Secretariat for this purpose, or another one of their joint choosing. Recourse to mediation does not alter the minimum cooling-off period.

5. If no mediator is chosen by the disputing parties prior to three months before the expiration of the cooling-off period, the President of the COMESA Court of Justice or his/her designate shall appoint a mediator from the COMESA Secretariat's list who is not a national of the Member State of the COMESA investor or the Member State(s) party to the dispute. The appointment shall be binding on the disputing parties.

6. If the parties accept a mediation ruling, the ruling shall immediately be implemented thereafter.

Article 35. Settlement of Disputes between Member States

1. Any dispute between Member States as to the interpretation or application of this Agreement not satisfactorily settled through amicable means in the cooling-off period may be referred for decision to the COMESA Court of Justice sitting as a court of arbitration, in accordance with Article 28(b) of the COMESA Treaty.

2. The decision under paragraphs 1 shall be final and binding.

Article 36. Investor-State Disputes

1. In the event that a dispute between a COMESA investor and a Member State has not been resolved, pursuant to Article 34, a COMESA investor may, subject to the exhaustion of local remedies in the host state, submit a claim to the COMESA Court of Justice under Article 26 (1) of the Treaty.

2. Paragraph 1 shall apply unless the disputing parties, by specific written agreement, submit the dispute to the following arbitral fora:

(a) an African international arbitration institution; or

(b) under any other arbitration institution or under any other arbitration rules, as both parties to the dispute agree.

3. A COMESA investor or its investment may submit a claim to arbitration pursuant to this Agreement, provided that the COMESA investor or investment, as appropriate:

(a) has first submitted a claim before the domestic courts of the Host State for the purpose of pursuing local remedies, after the exhaustion of any administrative remedies, relating to the measure underlying the claim under this Agreement, and a resolution has not been reached within a reasonable period of time from its submission to a local court of the host state; or

(b) demonstrates on a motion to permit arbitration that there are no reasonably available legal remedies capable of providing effective remedies for the dispute concerning the underlying measure, or the legal remedies provide no reasonable possibility of such remedies in a reasonable period of time.

4. No claim shall be submitted to arbitration if more than three (3) years have elapsed from the date on which the COMESA investor or its investment first acquired, or should have first acquired, knowledge of the breach and knowledge that the COMESA investor or its investment has incurred loss or damage.

5. If the COMESA investor elects to submit a claim at one of the fora set out in paragraph 1 of this Article, that election shall be definitive and the investor may not thereafter submit a claim relating to the same subject matter or underlying measure to other fora.

6. Each Member State consents to the submission of a claim to arbitration under this Agreement in accordance with its provisions. Each COMESA investor or its investment, by virtue of establishing or continuing to operate or own an investment subject to this Agreement, consents to the terms of the submission of a claim to dispute resolution under this Agreement.

7. A Member State against whom a claim is brought by a COMESA investor or its investment under this Article, may assert as a defence, counterclaim, right of set off or other similar claim, that the COMESA investor or its investment bringing the claim has not fulfilled its obligations under this Agreement, including the obligations to comply with all applicable domestic measures or that it has not taken all reasonable steps to mitigate possible damages.

Article 37. Enforceability of Final Awards and other Decisions

Enforceability of final awards and other decisions shall be governed by the rules of civil procedure in force in the Member State in which execution is to take place.

Part Six. FINAL PROVISIONS

Article 38. Other Agreements

1. This Agreement or any action taken under it shall not affect the rights and obligations of the Member States under existing agreements to which they are party.

2. Nothing in this Agreement shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of this Agreement.

3. In the event of inconsistency between this Agreement and such other agreements between Member States mentioned in paragraph 2 of this Article, this Agreement shall prevail to the extent of the inconsistency, and in so far as it is more favorable to the investor.

Article 39. Amendments

Any amendments to this Agreement shall be adopted by the Council and shall enter into force when ratified by two thirds of the Member States that have ratified or acceded to the Agreement.

Article 40. Supplementary Arrangements

Annexes and any other arrangements arising under this Agreement shall form an integral part of this Agreement.

Article 41. Adoption of Regulations

The Council may on the recommendation of the CCIA Committee adopt additional regulations to this Agreement, which shall come into force in accordance with the provisions of Article 43 of this Agreement.

Article 42. Entry Into Force

1. This Agreement shall enter into force when signed and ratified by at least two thirds Member States.

2. This Agreement shall enter into force in relation to an acceding Member State on the date its instrument of accession shall be deposited.

Article 43. Accession

Any Member State that has not ratified this Agreement on the date of its entry into force may accede to this Agreement.

Article 44. Depository

This Agreement and all instruments of ratification or accession shall be deposited with the Secretary General who shall transmit certified true copies of this Agreement to all the Member States.

Article 45. Withdrawal

1. This Agreement shall remain in force unless terminated by consensus of Member States.

2. A Member State may withdraw from this Agreement by written notification to the Secretary General who shall immediately inform all the Member States. The Agreement shall expire for that Member State one year after the date of such notification, provided that the rights of COMESA investors where an investment is substantially in the process of being established or has been established shall survive for a period of five years from such withdrawal.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Investment Agreement for the COMESA Common Investment Area.

DONE at ..... this ..... day of ..... 2018, in the English, French and Arabic languages, all three texts being authentic.

The President of the Republic of Burundi

The President of the Union of the Comoros

The President of the Democratic Republic of Congo

The President of the Republic of Djibouti

The President of the Arab Republic of Egypt

The President of the State of Eritrea

His Majesty the King of the Kingdom of eSwatini

The President of the Federal Democratic Republic of Ethiopia

The President of the Republic of Kenya

The President of the State of Libya

The President of the Republic of Madagascar

The President of the Republic of Malawi

The Prime Minister of the Republic of Mauritius

The President of the Republic of Rwanda

The President of the Republic of Seychelles

The President of the Republic of Sudan

The President of the Republic of Uganda

The President of the Republic of Zambia

The President of the Republic of Zimbabwe

Schedule I. CO-OPERATION AND FACILITATION PROGRAMME

In respect of the Co-operation and Facilitation Programme, Member States shall take:

(a) individual initiative to:

(i) increase transparency of Member State's investment rules, regulations, policies and procedures through the publication of Such information on a regular basis and making such information widely available;

(ii) simplify and expedite procedures for applications and approvals of investment projects at all levels; and

(iii) expand the number of bilateral Double Taxation Avoidance Agreements among COMESA Member States;

(b) collective initiative to:

(i) establish a Database for COMESA Supporting Industries and COMESA Technology Suppliers;

(ii) establish a COMESA database to enhance the flow of COMESA investment data and information on investment opportunities in COMESA:

(iii) promote public-private sector linkages through regular dialogues with the COMESA business community and other international organizations to identify investment impediments within and outside COMESA and propose ways to improve the COMESA investment environment;

(iv) identify target areas for technical co-operation, e.g. development of human resources, infrastructure, supporting industries, small and medium-sized enterprises, information technology, industrial technology, R & D and co-ordinate efforts within COMESA and other international organizations involved in technical co-operation;

(v) review and where possible improve the Investment Agreement for the COMESA Common Investment Area; and

(vi) examine the possibility of a COMESA Double Taxation Agreement.

Schedule II. PROMOTION AND AWARENESS PROGRAMME

In respect of the Promotion and Awareness programme, Member States shall:

(a) organise joint investment promotion activities e.g. seminars, workshops, inbound familiarization tours for investors from capital exporting countries, joint promotion of specific projects with active business sector participation;

(b) conduct regular consultation among investment agencies of COMESA on investment promotion matters;

(c) organize investment-related training programmes for officials of investment agencies of COMESA;

(d) exchange lists of promoted sectors/industries where member States could encourage investments from other member States and initiate promotional activities; and

(e) examine possible ways by which the investment agencies of Member States can support the promotion efforts of other member States.

Schedule III.

List of national authority contact points for Member States for the purposes of registering an investment under Article 3.