INVESTMENT AGREEMENT FOR THE COMESA COMMON INVESTMENT AREA

The Governments of Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, 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 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 31 st 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;

DETERMINED to realise the vision of COMESA to establish a competitive COMESA Common Investment Area through a more liberal and transparent investment environment by 1 st January 2010; 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:

Article 1. Definitions

For the purposes of this Agreement:

1. "CCIA means the area that covers the whole of the territories of Member States of COMESA as defined by their respective legislation.

2. "CCIA Committee means the Committee referred to under Article 7 of this Agreement.

3. "COMESA means the Common Market for Eastern and Southern Africa established under Article 1 of the COMESA Treaty.

4. "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 the purposes of this definition:

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.

The concept of 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.

5. "COMESA Treaty means the Treaty establishing the Common Market for Eastern and Southern Africa.

6. "Council means the Council of Ministers of COMESA as established under Article 7 of the COMESA Treaty.

7. "economic activities means all economic activities of the economy, including services, where investment, as defined in this Article, is taking place.

8. "freely convertible currency means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in international foreign exchange market.

9. "investment means assets admitted or admissible in accordance with the relevant laws and regulations of the COMESA Member State in whose territory the investment is made, and includes:

(a) moveable and immovable property and other related property rights such as mortgages, liens and pledges;

(b) claims to money, goods, services or other performance having economic value;

(c) stocks, shares and debentures of companies and interest in the property of such companies;

(d) intellectual property rights, technical processes, know-how, goodwill and other benefits or advantages associated with a business operating in the territory of the COMESA Member States in which the investment is made;

(e) business concessions conferred by law or under contract, including:

(i) build, operate, own/transfer, rehabilitate, expand, restructure and/or improve infrastructure;

(ii) concessions to search for, cultivate, extract or exploit natural resources; and

(f) such other activities that may be declared by the Council as investments;

But excludes: goodwill market share, whether or not it is based on foreign-origin trade, or rights to trade; claims to money deriving solely from commercial contracts for the sale of goods and services to or from the territory of a Member State to the territory of another Member State, or a loan to a Member State or to a Member State enterprise; a bank letter of credit; or the extension of credit in connection with a commercial transaction, such as trade financing.

10. "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.

11. "Member State means a Member State of COMESA that has ratified or acceeded to this Agreement.

12. 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.

13. "Sensitive List set out in Annex C of this Agreement means those:

(a) economic activities listed by a Member State that are partially Or wholly excluded from foreign investment pursuant to Article 18 of this Agreement; or

(b) measures affecting investment listed by Member States pursuant to Article 18 of this Agreement; or

(c) a list of the forms of investment that a Member State may wish to exclude from the definition of investment under Article 1 of this Agreement.

14. "Temporary Exclusion List set out in Annex D means those:

(a) economic activities listed by a Member State where foreign investment is temporarily excluded for a given period of time pursuant to Article 18 of this Agreement; or

(b) measures affecting investment listed by Member States that are temporarily excluded from the scope of all or part of this Agreement for a given period of time pursuant to Article 18 of this Agreement; or

(c) a list of the forms of investment that a Member State may wish to exclude temporarily for a given period of time from the definition of investment under Article 1 of this Agreement.

Part ONE. Comesa Common Investment Area

Article 2. Objectives of Part One

The objective of Part One of this Agreement is to establish a competitive COMESA Common Investment Area with a more liberal and transparent investment environment among Member States in order to:

(a) substantially increase the free flow of investments into COMESA from both COMESA and non-COMESA sources;

(b) jointly promote COMESA as an attractive investment area;

(c) strengthen and increase the competitiveness of COMESA's economic activities;

(d) gradually eliminate investment restrictions and conditions which may impede investment flows and the operation of investment projects in COMESA.

Article 3. Features

The CCIA shall be an area where:

(a) there is a coordinated COMESA investment co-operation programme that will generate increased investments from COMESA and nonCOMESA sources;

(b) there is freer flow of capital, skilled labour and professionals, and technology amongst Member States. Towards this end, Member States shall make every effort to:

(i) extend national treatment to COMESA investors by 2010;

(ii) ensure all economic activities are opened for investment to COMESA investors by 2010; and

(c) the private sector is a partner and fully participates in investment and related activities of the Common Market as provided for under Article 151 of the COMESA T reaty.

Article 4. Transparency

1. Each Member State shall make available to the CCIA Committee before the Agreement comes into effect all 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 all 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 realise 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) 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.

(e) 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 retension of investments.

Article 6. International Multilateral Agreements

Member States shall, where they have not done so, endeavour to accede to:

(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) The Meeting of Ministers responsible for investment of each Member State, which for the purposes of this Agreement, shall be known as the COMESA Common Investment Area Committee ("CCIA Committtee); and

(b) The Co-ordinating Committee on Investment composed of senior officials from Ministeries 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 Co-ordinating Committee on Investment (CCI)

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 Articles 18(3), 18(4), 24(3) and 25(5) of 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

(vi) Subsidies; 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 CCI shall be responsible for:

(a) monitoring and keeping under constant review the implementation of this Agreement;

(b) co-ordinating the implementation of this Agreement;

(c) submiting 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;

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

(e) 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.

5. The Manager of the COMESA Regional Investment Agency or their 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 CCI shall meet as often as necessary for the proper discharge of their functions and shall determine their own Rules of Procedure.

7. Subject to the Rules of Procedure agreed pursuant to paragraph 6 of this Article, the key representatives of the private sector and other stakeholders as may be determined by each Member State, shall participate in the meetings of the institutions described under paragraph 1 of this Article as ex-officio members.

Article 8. Implementing Programmes and Action Plans

1. Member States shall, for 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; and

(c) liberalisation programme as specified in Schedule III 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. Modification of Schedules, Annexes and Action Plans

1. Any modification to or withdrawal of any commitments by Member States in Schedules I, II and III and Action Plans thereof shall be subject to the consideration of the CCIA Committee.

2. Member States may amend the lists in Annexes B, C and D at their discretion subject to the preservation of rights for a COMESA investor who has commenced the process of establishing an investment or who has established an investment pursuant to this Agreement. Member States shall inform the CCIA Committee of any amendments made to Annexes B, C and D.

3. Any modification to Schedules I, II, III and Action Plans thereof, and the Annexes to this Agreement shall be included in any revised Schedules, Action Plans or Annexes published later than such modification. The COMESA Secretariat shall notify the Member States of such modification within one month.

Article 10. Relation to Dispute Settlement

No investor shall have recourse to dispute settlement for any matter relating to Part One of this Agreement.

Part TWO. Rights and Obligations

Article 11. Objectives of Part Two

The objectives of Part Two of this Agreement are to provide COMESA investors with certain rights in the conduct of their business within an overall balance of rights and obligations between investors and Member States.

Article 12. Coverage

1. This Agreement shall only apply to investments of COMESA investors that have been specifically registered pursuant to this Agreement with the relevant authority of the Member State in which the investment is made as set out in Annex B.

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. Subject to paragraph 1 of this Article, this Agreement shall not be applicable to claims arising out of disputes which occurred prior to entry into force of the Agreement.

Article 13. Investor Obligation

COMESA investors and their investments shall comply with all applicable domestic measures of the Member State in which their investment is made.

Article 14. Fair and Equitable Treatment

1. Member States shall accord fair and equitable treatment to COMESA investors and their investments, in accordance with customary international law. Fair and equitable treatment includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

2. Paragraph 1 of this Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments and does not require treatment in addition to or beyond what is required by that standard.

3. For greater certainty, Member States understand that different Member States have different forms of administrative, legislative and judicial systems and that Member States at different levels of development may not achieve the same standards at the same time. Paragraphs 1 and 2 of this Article do not establish a single international standard in this context.

Article 15. Transfer of Assets

Taking account of the need to facilitate, promote and enhance the movement of capital in the CCIA, and according to their laws and regulations, Member States shall accord to COMESA investors the right to:

(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 auxillary materials, semi-finished products as well as replacing capital assets; and

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

Article 16. Movement of Labour

Taking account of the need to facilitate the movement of labour resources in the CCIA, Member States shall accord to investors the right to hire technically qualified persons from any country. Such persons shall have full rights to enter and receive the necessary authorisations to reside in the Member State subject to the laws in force in that Member State promptly and without burdensome requirements. However, COMESA investors shall accord a priority to workers who possess the same qualifications and are available in the Member State or any other Member State.

Article 17. National Treatment

1. Subject to Article 18, 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 establishment, acquisition, expansion, 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; and

(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. Exceptions to National Treatment and other Obligations

1. This Agreement shall not apply to the Temporary Exclusion List and/or Sensitive List which a Member State may submit provided the Temporary Exclusion List and/or Sensitive List is submitted to the CCIA Committee within six months after the date of ratification and accession to this Agreement.

2. Any Temporary Exclusion List and/or Sensitive List submitted by a Member State shall be included in Annexes C and D to this Agreement.

3. In the event that a Member State, for justifiable reasons, is unable to provide any list within the stipulated period, it may seek an extension from the CCIA Committee. The CCIA Committee shall determine the length of the extension which shall not be longer than one year.

4. The Sensitive and Temporary Exclusion Lists shall be reviewed every two years and at such subsequent periodic intervals as may be decided by the CCIA Committee.

Article 19. 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 favorable than that it accords, in like circumstances, to investors and their investments from any third country with respect to the establishment, acquisition, expansion, 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. The provisions of Article 17(3) shall apply with the necessary modification to this Article.

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; or

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

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;

(a) on a non-discriminatory basis;

(b) in accordance with due process of law; and

(c) on payment of prompt adequate compensation.

2. Appropriate compensation shall normally be equivalent 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. Compensation may be adjusted to reflect the aggravating conduct by a COMESA investor or such conduct that does not seek to mitigate damages.

3. If payment is made in a currency of the host or home state, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

4. 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 interest had accrued at a commercially reasonable rate for that host or home state currency from the date of expropriation until the date of payment.

5. 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.

6. 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.

7. 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. Consistent with the right of states to regulate and the customary international law principles on police powers, bona fide regulatory measures taken by 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 indirect 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.

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, indemnifcation, 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 rate of exchange 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 investor 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:

(a) designed and applied to protect national security and public morals;

(b) designed and applied to protect human, animal or plant life or health;

(c) designed and applied to protect the environment; or

(d) any other measures as may from time to time be determined by a Member State, subject to approval by the CCIA Committee.

2. Nothing in this Agreement shall be construed to prevent a Member State from adopting, maintaining or enforcing any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to the principles outlined in sub-paragraphs 1(a) to (c) above.

3. Nothing in this Agreement shall be construed to:

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

(b) 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.

Article 23. Non-application to Taxation Measures

1. This Agreement shall not apply to taxation measures except as provided for in paragraph 2 of this Article.

2. Article 20 shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 20 as the basis of a claim where it has been determined pursuant to this Paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 20 with respect to a taxation measure must refer to the Secretary General of the COMESA at the time that it gives its notice of intention to arbitrate under Article 28 the issue of whether that taxation measure involves an expropriation. The Secretary General shall ask the competent authorities of the host state and home state whether they do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, in which case the investor may submit its claim to arbitration, if the other conditions of Article 28 have been fulfilled as well.

Article 24. Emergency Safeguard Measures

1. If, as a result of opening up of economic activities in accordance with this Agreement, a Member State suffers or is threatened with any serious injury, the Member State may take emergency safeguard measures to the extent and for such period as may be necessary to prevent or to remedy such injury. The measures taken shall be provisional and without discrimination.

2. Where emergency safeguard measures are taken pursuant to this Article, notice of such measures shall be given to the CCIA Committee within

14 days from the date they are taken. The notice shall include justification of such action supported by evidence gathered from an investigation.

3. The CCIA Committee shall determine what constitutes serious injury and threat of serious injury and the procedures of instituting emergency safeguard measures pursuant to this Article.

Article 25. 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:

(a) shall not discriminate among Member States;

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

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

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

(e) shall 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 THREE. Dispute Settlement

Article 26. Negotiation and Mediation

1. In the event that a dispute arises from the interpretation and 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 27 or 28 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 27 or 28.

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

4. Where no alternative means of dispute settlement are agreed upon, a party 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 27 or 28. 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 designate shall appoint a mediator from the COMESA Secretariats 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 27. 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 negotiation within 6 months, may be referred for decision to either

(i) an arbitral tribunal constituted under the COMESA Court of Justice in accordance with Article 28(b) of the COMESA Treaty; or

(ii) an independent arbitral tribunal; or

(iii) the COMESA Court of Justice sitting as a court;

2. The arbitral tribunal shall be formed in accordance with the provisions on arbitration set out in Annex A.

3. All documents relating to a notice of intention to arbitrate, the settlement of any dispute pursuant to Article 27, the initiation of a panel, or the pleadings, evidence and decisions in them, shall be available to the public.

4. Procedural and substantive oral hearings shall be open to the public.

5. An arbitral tribunal may take such steps as are necessary, by exception, to protect confidential business information in written form or at oral hearings.

6. An arbitral tribunal shall be open to the receipt of amicus curiae submissions in accordance with the process set out in Annex A.

7. The forum that a Member State first uses to bring its claim under this Article shall be determinative and it shall not subsequently have the right to bring a claim before any other fora.

8. The decision of the COMESA Court of Justice sitting as a tribunal or the independent arbitral tribunal shall be final and binding subject to the right of appeal as set out in Annex A.

Article 28. Investor-state Disputes

1. In the event that a dispute between a COMESA investor and a Member State has not been resolved pursuant to good faith efforts in accordance with Article 26, a COMESA investor may submit to arbitration under this Agreement a claim that the Member State in whose territory it has made an investment has breached an obligation under Part Two of this Agreement and that the investment has incurred loss or damage by reason of, or arising out of, that breach by submitting that claim to any one of the following fora at a time:

(a) to the competent court of the Member State in whose territory the investment has been made;

(b) to the COMESA Court of Justice in accordance with Article 28(b) of the COMESA Treaty; or

(c) to international arbitration:

(i) under the International Centre for the Settlement of Investment Disputes (ICSID) Convention, provided that both the home state of an investor and Member State in whose territory the investment has been made are parties to the ICSID Convention;

(ii) under the ICSID Additional Facility Rules, provided that either the non-disputing Party or the respondent is a party to the ICSID Convention;

(iii) under the UNCITRAL Arbitration Rules; or

(iv) Under any other arbitration institution or under any other arbitration rules, if the both parties to the dispute agree.

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

3. If the COMESA investor elects to submit a claim at one of the fora set out in paragraph 1 of this, 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.

4. Each Member State consents to the submission of a claim to arbitration under this Agreement in accordance with its provisions. Each investor, 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 if he exercises the right to bring a claim against a Member State under this Agreement.

5. All documents relating to a notice of intention to arbitrate, the settlement of any dispute pursuant to Article 28, the initiation of an arbitral tribunal, or the pleadings, evidence and decisions in them, shall be available to the public.

6. Procedural and substantive oral hearings shall be open to the public.

7. An arbitral tribunal may take such steps as are necessary, by exception, to protect confidential business information in written form or at oral hearings.

8. An arbitral tribunal shall be open to the receipt of amicus curiae submissions in accordance with the process set out in Annex A with necessary adaption for application to investor-state disputes under this Article.

9. A Member State against whom a claim is brought by a COMESA investor under this Article may assert as a defence, counterclaim, right of set off or other similar claim, that the COMESA investor 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 29. Enforceability of Final Awards

Member States shall adopt such domestic rules as are required to make final awards enforceable in domestic legal proceedings in their states.

Article 30. Roster of Arbitrators

The COMESA Secretariat shall maintain a roster of qualified arbitrators from which parties to an arbitration under this Agreement may select arbitrators

Article 31. Governing Law In Disputes

When a claim is submitted to an arbitral tribunal, it shall be decided in accordance with this Agreement, the COMESA Treaty, national law of the host state, and the general principles of international law.

Part FOUR. Final Provisions

Article 32. 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 parties.

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, except as otherwise provided in this Agreement.

4. This Agreement shall not cover matters relating to investments covered by non-COMESA Agreements.

5. Where Member States have an international investment agreement with a third party, they shall strive to renegotiate that agreement to make it consistent with the present Agreement.

Article 33. Amendments

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

Article 34. Supplementary Agreements or Arrangements

The Schedules, Action Plans, Annexes, and any other arrangements or agreements arising under this Agreement shall form an integral part of this Agreement.

Article 35. Adoption of Protocols

The Council may on the recommendation of the CCIA Committee adopt additional protocols to this Agreement which shall come into force in accordance with the provisions of Article 37of this Agreement.

Article 36. Accession of New Members

New members of COMESA shall accede to this Agreement on terms and conditions agreed between them and signatories to this Agreement.

Article 37. Entry Into Force

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

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

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

Article 38. 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 39. Withdrawal and Renewal

1. This Agreement shall remain in force for a period of ten years and shall continue in force for the same period unless terminated by consensus of Member States.

2. Notwithstanding Article 39, for ten years from the date of termination, the Agreement shall continue to apply to investments of COMESA investors established and acquired prior to the date of termination.

3. 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 InvestmentAgreement for the COMESA Common Investment Area.

DONE at..... this 23 day of May 2007, in the English and French languages both texts being authentic.

Schedule I. CO-OPERATION AND FACILITATION PROGRAMME

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

(a) Individual initiative to:

(a) Individual initiative to:

(i) Increase transparency of Member States 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 and 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;

1. 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.

2. Conduct regular consultation among investment agencies of COMESA on investment promotion matters;

3. Organize investment-related training programmes for officials of investment agencies of COMESA;

4. Exchange lists of promoted sectors/industries where member States could encourage investments from other member States and initiate promotional activities; and

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

Schedule III. LIBERALISATION PROGRAMME

In respect of the Liberalization Programme, Member States shall:

1. 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

2. Undertake individual action plans to:

(i) open up all industries for investment to COMESA investors by 2010 in accordance with the provisions of this Agreement; and

(ii) extend national treatment to all COMESA investors by 2010 in accordance with the provisions of this Agreement; and

3. Promote freer flow of capital, skilled labour, professionals and technology among COMESA member States.

1. Consultation and Negotiation

In the event of a dispute under this Agreement, the claimant and the respondent shall seek to resolve the dispute in accordance with Article 28. The claimant and respondent constitute the disputing parties.

2. Submission of a Claim to Arbitration

(1) In the event that a disputing party considers that a dispute cannot be settled by alternative means, and all other pre-conditions for such a dispute as required by the Agreement have been fulfilled: A Member State may submit to arbitration under this Agreement a claim that the respondent has breached an obligation under this Agreement, and that the claimant

or its investor has incurred loss or damage by reason of, or arising out of, that breach;

(2) For greater certainty, a claimant may submit to arbitration a claim referred to in Paragraph (1) that the respondent has breached an obligation through the actions of a designated government monopoly, local or state government or a state enterprise exercising delegated government authority.

(3) At least 180 days before submitting any claim to arbitration, a potential claimant shall deliver to the potential respondent a written notice of its intention to submit the claim to arbitration ("notice of intention). The notice shall specify:

(a) the name and address of the claimant and its legal representative;

(b) for each claim, the provision(s) of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and, where appropriate, the approximate amount of damages claimed.

The CCIA Committee may establish a specific form for this purpose and make it available through the Internet and other means.

(4) Provided that at least six months have elapsed since the events giving rise to the claim, and all other pre-conditions for such a dispute as required by the Agreement have been fulfilled, a claimant may formally submit a Notice of Arbitration to the respondent State and to the COMESA Secretariat.

(5) A claim shall be deemed submitted to arbitration when the claimants Notice of Arbitration is submitted to the respondents and to the COMESA Secretariat. The CCIA Committee may establish a specific form for this purpose and make it available through the internet and other means. The Notice of Arbitration shall include, at a minimum, the information required in Paragraph (3).

3. Rules of Arbitration

The CCIA Committee shall establish Rules of Arbitration consistent with the provisions of this Agreement. Until the adoption of such Rules, the Rules of Arbitration of the International Centre for Settlement of Investment Disputes in effect on the date the claim or claims were submitted to arbitration under this Agreement, shall govern the arbitration except to the extent modified by this Agreement, irrespective of whether the host and home states are parties to the ICSID Convention.

4. Consent of Each Party to Arbitration

Each Member State consents to the submission of a claim to arbitration under this Agreement in accordance with its provisions.

5. Conditions and Limitations on Consent of Each Party

No claim may be submitted to arbitration if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged in the Notice of Arbitration.

6. Selection of Arbitrators

(1) The Secretary General of the COMESA Secretariat shall, within 30 days of the filing of a notice of arbitration, appoint the panel members from the standing roster of panelists. No panel member shall be from the host or home state.

(2) A panel shall be composed of three members, with one designated as President of the panel.

(3) A disputing party may contest the nomination of an arbitrator for good cause, including real or apparent conflict of interest. Any challenges shall be decided by the remaining two designated arbitrators. Such a challenge must be brought as soon as practicable after information leading to the challenge is made known to the challenging party.

7. Conduct of the Arbitration

(1) Unless otherwise agreed by the disputing parties, the place of arbitration shall be at the COMESA Secretariat.

(2) Any non-disputing Member State may make oral and written submissions to the tribunal regarding the interpretation of

this Agreement.

(3) Without prejudice to a tribunals authority to address other objections as a preliminary question, such as an objection that a dispute is not within a tribunals competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its first written argument.

(b) On receipt of an objection under this Paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds thereof.

(c) In deciding an objection under this Paragraph, the tribunal shall assume to be true claimants factual allegations in support of any claim in the notice of arbitration. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this Paragraph or make use of the expedited procedure set out in the following Paragraph.

(4) In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under Paragraph (3) or any objection that the dispute is not within the tribunals competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds thereof, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.

(5) When it decides a respondents objection under Paragraph (3), the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider inter alia whether either the claimants claim or the respondents objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

(6) A respondent may not assert as a defense, counterclaim, right of setoff, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

(7) A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunals jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunals jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach of the relevant parts of this Agreement. The protection of the public welfare and public interests shall be considered when any interim measures are requested.

8. Amicus Curiae

(1) The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party (the "submitter).

(2) The submissions shall be provided in English, French or Potugesesor in the principal language of the host state, and shall identify the submitter and any Party, other government, person, or organization, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission.

(3) The CCIA Committee may establish and make available to the public a standard form for applying for sta/tus as amicus curiae. This may include specific criteria which will help guide a tribunal in determining whether to accept a submission in any given instance.

(4) Amicus curiae submissions may relate to any matter covered by this Agreement that is relevant to the claim before the tribunal.

9. Transparency of Arbitral Proceedings

(1) Subject to Paragraphs (2) and (4), the claimant and respondent shall, after sending the following documents to the other

disputing party, promptly transmit them to the Secretariat which shall make them available to the public including by Internet:

(a) the notice of intention;

(b) any settlement agreement resulting from alternative dispute resolution processes;

(c) the notice of arbitration;

(d) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to this Annex or the Rules of Arbitration;

(e) minutes or transcripts of hearings of the tribunal, where available; and

(f) all orders, awards, and decisions of the tribunal.

(2) The tribunal shall conduct all hearings open to the public and shall determine, in consultation with the disputing parties and the Secretariat the appropriate logistical arrangements. However, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a partys law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

(3) Nothing in this section requires a respondent to disclose confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law or to furnish or allow access to information that it may withhold in accordance with this Agreement.

(4) Confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) subject to Sub-paragraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law where the disputing party that provided the information clearly designates it in accordance with Sub-paragraph (b);

(b) any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing party and made public in accordance with Paragraph (1); and

(d) the tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Member States law. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

i) withdraw all or part of its submission containing such information; or

ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunals determination and Sub-paragraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under Sub-paragraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under Sub-paragraph (d)(ii) of the disputing party that first submitted the information.

(5) Nothing in this Agreement authorizes a respondent to withhold from the public information required to be disclosed by its laws.

10. Expert Reports

A tribunal, at the request of a disputing party or on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other matters raised in a proceeding. The tribunal

shall consider any terms or conditions relating to such appointments that the disputing parties may suggest.

11. Consolidation

(1) Where two or more claims have been submitted separately to arbitration under this Agreement and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order.

(2) A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary General of the COMESA Secretariat and to all the disputing parties sought to be covered by the order and shall specify in the request:

a) the names and addresses of all the disputing parties sought to be covered by the order;

b) the nature of the order sought; and

c) the grounds on which the order is sought.

(3) Unless the Secretary General of the COMESA Secretariat finds within 30 days after receiving a request under Paragraph (2) that the request is manifestly unfounded, a separate tribunal shall be established under this Article by the Secretary General solely to consider the issue of consolidation.

(4) Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

a) assume jurisdiction over, and hear and determine together, all or part of the claims;

b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

c) instruct a tribunal previously established to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that that tribunal shall decide whether any prior hearing shall be repeated.

(5) Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration and that has not been named in a request made under Paragraph (2) may make a written request to the tribunal that it be included in any order made under Paragraph (4), and shall specify in the request:

a) the name and address of the claimant;

b) the nature of the order sought; and

c) the grounds on which the order is sought.

(6) On application of a disputing party, a tribunal established under this Article, pending its decision under Paragraph (4), may order that the proceedings of another tribunal be stayed, unless the latter tribunal has already adjourned its proceedings.

12. Awards

(1) Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

a) monetary damages and any applicable interest against a Member State; and

b) restitution of property from a Member State, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorneys fees in accordance with the applicable arbitration rules.

(2) Subject to Paragraph (1), where a claim is submitted to arbitration on behalf of an investment:

a) an award of restitution of property shall provide that restitution be made to the investment; and

b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the investment.

(3) A tribunal may not award punitive damages.

(4) An award made by a panel tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

(5) Subject to Paragraph (6), a disputing party shall comply with an award without delay.

(6) A disputing party may not seek enforcement of a final award until:

a) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to appeal the award; or

b) the COMESA Court of Justice has rejected an appeal.

(7) Each Party shall provide for the enforcement of an award in its territory and make the appropriate legal proceedings available for this purpose.

13. Appellate Process

(1) A Member State may appeal to the COMESA Court of Justice, within 60 days, a panel decision on the basis of procedural irregularity, an error of law or a material and manifest error of fact. Such appeals shall proceed in accordance with Annex A. No other appeal or arbitration review process shall be applicable to arbitrations under this Agreement.

(2) The appellate process shall apply, mutatis mutandis, the rules of procedure for the arbitration tribunals, subject to such moficiations as required by this Agreement.

(3) The appeal must be filed within 60 days of the decision being appealed.

(4) The CCIA Committee shall establish, at it first meeting, the timelines for the appellate process.

(5) The decision on appeal shall be final and binding and not subject to further appeal or judicial review.

(6) A tribunal decision not taken to appeal shall have the same final and binding status.