

A g r e e m e n t

between

the Swiss Confederation

and

the Federal Democratic Republic of Ethiopia

on the Promotion and Reciprocal Protection

of Investments

Preamble

The Swiss Federal Council and the Government of the Federal Democratic Republic of Ethiopia,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (1) The term "investor" refers with regard to either Contracting Party to:
 - (a) any natural person who, according to the law of that Contracting Party, is considered to be its national;
 - (b) any juridical person which is constituted or otherwise duly organised under the law of that Contracting Party and is engaged in substantive business operations in that Contracting Party;
 - (c) any juridical person not established under the law of that Contracting Party
 - (i) in which more than 50 per cent of the equity interest is beneficially owned by persons of that Contracting Party;
 - (ii) in relation to which persons of that Contracting Party have the power to name a majority of its directors or otherwise legally direct its actions;
- (2) The term "investments" shall include every kind of asset and in particular:
 - (a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;
 - (b) shares, parts or any other kind of participation in companies;
 - (c) claims to money or to any performance having an economic value;
 - (d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
 - (e) concessions or similar rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.
- (3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.

- (4) The term "territory" means the territory of each Contracting Party over which that State may exercise sovereign rights or jurisdiction in accordance with international law.

Article 2

Scope of application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It shall however not be applicable to claims arising out of events which occurred prior to its entry into force.

Article 3

Promotion, admission

- (1) Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
- (2) Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with such an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.

Article 4

Protection, treatment

- (1) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way

impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, expansion, or disposal of such investments.

- (2) Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned.
- (3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.
- (4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.
- (5) For the avoidance of doubt it is confirmed that the national treatment principle provided for in paragraphs 2 and 3 of this Article applies to investments once legally admitted, whether through specific authorization or not.

Article 5

Free transfer

- (1) Each Contracting Party shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:
 - (a) returns:
 - (b) payments relating to loans incurred, or other contractual obligations undertaken, for the investment:

- (c) proceeds of the partial or total sale or liquidation of the investment, including possible increment values;
 - (d) earnings and other remuneration of personnel engaged from abroad in connection with the investment;
 - (e) the initial capital and additional amounts to maintain or increase the investment.
- (2) Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 6

Dispossession, compensation

- (1) Neither of the Contracting Parties shall take measures of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier. The amount of the compensation shall carry the usual bank interest, from the date of dispossession until payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.
- (2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of the latter, from a treatment not less favourable than that granted to its own investors or those of any third State as regards restitution, indemnification, compensation or other settlement.



Article 7

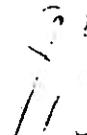
Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 8

**Disputes between a Contracting Party
and an investor of the other Contracting Party**

- (1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.
- (2) If these consultations do not result in a solution within six months from the date of the written request for consultations, the investor may submit the dispute, at his choice, for settlement to:
 - a) the competent court of the Contracting Party in the territory of which the investment has been made; or
 - b) the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965, once both Contracting Parties have become members of this Convention; or
 - c) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).



- (3) The Contracting Party which is a party to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defense its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.
- (4) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.
- (5) The arbitral award shall be final and binding for the parties to the dispute and shall be executed according to national law.

Article 9

Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
- (3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
- (4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- (5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is

a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 10

Other commitments

- (1) If provisions in the legislation of either Contracting Party or of an international agreement, to which both Contracting Parties are signatories, entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any particular obligation it has assumed with regard to an investment in its territory by investors of the other Contracting Party.

Article 11

Final provisions

- (1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that their legal requirements for the entry into force of international agreements have been fulfilled and shall remain in force for a period of ten years. Unless written notice of termination is given twelve months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for successive periods of five years.

- (2) In case written notice of termination of this Agreement is given, the provisions of Articles 1 to 10 shall continue to be effective for a further period of ten years for investments made before said notice.

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

Done in duplicate, at *Cranz Montana*
in the English language.

, on *26 of June 1998*

For the Swiss Confederation



For the Federal Democratic Republic of
Ethiopia

