

## ETHIOPIA

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### JOINT VENTURE COUNCIL OF STATE SPECIAL DECREE NO. 11/1989

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##### “ETHIOPIA TIKDEM”

Whereas the promotion of investment plays an important role in the endeavor of the People’s Democratic Republic of Ethiopia to develop the country’s economy and liberate the people from backwardness;

Whereas the formation of joint ventures with the participation of public capital and foreign or domestic private capital, or capital of cooperatives helps to increase the magnitude of investment;

Whereas it is necessary to enact a law that takes into account the problems encountered during the implementation of the joint venture law heretofore in force as well as current international, continental and national situations;

Now therefore, in accordance with Article 83 (1) of the Constitution, it is hereby decreed as follows:

## CHAPTER 1

### GENERAL PROVISIONS

#### 1. Short Title

This Special Decree may be cited as “Joint Venture Council of State Special Decree No.11/1989”.

#### 2. Definitions

In this Special Decree, unless the context otherwise, requires:

1. “domestic investor” means the Ethiopian State, a state enterprise or financial agency, cooperative, business organization registered in Ethiopia or a natural person residing in Ethiopia;
2. “foreign investor” means a foreign state, state enterprise or financial agency business organization not incorporated or registered under Ethiopian law or a natural person not residing in Ethiopia;
3. “natural person not residing in Ethiopia” includes any Ethiopian national residing outside Ethiopia;
4. “State Committee” and “Office” mean the State Committee for Foreign Economic Relations and the Office of the State Committee for Foreign Economic Relations, respectively.

## CHAPTER 2

### ESTABLISHMENT, REGISTRATION AND ACTIVITIES OF JOINT VENTURE

#### 3. Areas Open for Joint Venture Activities

1. Joint ventures may be formed to undertake activities which introduce technology and know-how into the country or which have positive foreign exchange impact or which otherwise make positive contributions to economic and social development and which create employment opportunities in the country.
2. Notwithstanding sub-article 1 of this Article, joint ventures shall not, unless the Council of Ministers decides otherwise, be permitted to invest in areas such as electric light and power, water supply, banking and insurance business, retail trade, transport and communications.

#### 4. Parties to a Joint Venture

A joint venture may be formed by:

1. Ethiopian State, state enterprise or financial agency capital on the one hand and foreign state; state enterprise, financial agency or private capital on the other;
2. Ethiopian State, state enterprise, financial agency capital and Ethiopian cooperative or private capital on the one hand and foreign state, state enterprise, financial agency or private capital, jointly or severally on the other;

#### 5. Forms of Capital Contribution to a Joint Venture

1. A foreign investor in a joint venture may contribute in any of the following forms:
  - a) cash contribution in convertible currency;
  - b) investment goods.

2. the contribution of a domestic investor to a joint venture may include the following:

- a) buildings, facilities, machinery and tools, vehicles, construction materials, services and rights on the use of land;
- b) local currency.

3. The ratio of capital contribution of each participant in a joint venture as well as the par value of the shares shall be agreed upon and specified in the joint venture agreement.

4. The value of contribution in kind of domestic and foreign investors shall be assessed in Birr and shall be fixed in the joint venture agreement.

5. The cash contribution of a foreign investor made in convertible currency in accordance with sub-article 1 (a) of this Article shall be converted into Birr according to the official exchange rate applied by the National Bank of Ethiopia at the time the contribution is effected.

6. The capital contribution made by any participant of a joint venture shall be assessed by experts and verified by independent accountants registered in Ethiopia capable of issuing certificate of verification;

7. The assessment report and the certificate of verification shall be submitted to the Office.

## 6. Procedures for Establishment of Joint Venture

The procedure for establishment of a joint venture shall be in accordance with directives issued by the State Committee. Such directives shall provide for the following:

- 1. the contents of application to participate in a joint venture and other documents;
- 2. the manner of, and the time limit for making decision on the applications,
- 3. the contents of an application and related documents submitted for the establishment of a joint venture;
- 4. the time limit for making decision on an application for the establishment of a joint venture;
- 5. the certificate to be issued by applications; and
- 6. other matters.

## 7. The Joint Venture Agreement

1. the joint venture agreement shall be the instrument of formation of a joint venture.

2. the joint venture agreement shall, among other things, contain the following:

- a) the name, nationality and address of the shareholders;
- b) the purpose for which the joint venture is formed;
- c) the name of the joint venture and the address of its head office;
- d) the share capital and the par value of each share;
- e) the contribution in kind and in cash of each shareholder;
- f) the amount of capital contributed by each shareholder and the time schedule for raising the prescribed share capital by each shareholder;

- g) the duration of the joint venture and the procedure for its dissolution and liquidation;
- h) the manner of distribution of profits;
- i) the names of the chairman and the members of Board of Directors including their powers and duties, term of office, method of appointment of the General Manager and Deputy General Manager;
- j) scope and duration of the tax exemption privileges;
- k) the rate of deduction and Ceiling of General Reserved Fund;
- l) the date of commencement of operations of the joint venture;
- m) the frequency; method of calling, the quorum, voting and procedures of meetings.

3. A joint venture agreement shall follow the model agreement issued by the Office.
4. A joint venture agreement, amendments thereto and extension of its validity shall be subject to approval by the State Committee.
5. The conditions of approval of a joint venture agreement shall be prepared by the Office.

## 8. Name of a Joint Venture

A joint venture shall have a name which shall not affect the rights of third parties.

## 9. Registration

1. A joint venture may commence operations only upon registration with the Ministry of Domestic Trade.
2. The following shall be submitted together with the application:
  - a) the joint venture agreement;
  - b) a certificate issued by the Office attesting that at least twenty five percent (25%) of the capital contribution of the parties to the joint venture has been paid up; and
  - c) a certificate of approval issued by the Office endorsing the establishment of the joint venture.
3. The Ministry of Domestic Trade shall register and issue a certificate of registration immediately upon receipt of the application for registration and other documents specified in sub-article of this Article.
4. A joint venture registered under this Special Decree shall be granted a manufacturing, business or other license or permit, as appropriate, through the Office.

## 10. Acquiring Legal Personality

1. A joint venture shall attain legal personality under its registration pursuant to Article 9 of this Special Decree.
2. A joint venture may, in its own name, enter into contract, acquire ownership rights, undertake obligations, sue and be sued, use and dispose of its property.

## 11. Extent of Liability

1. A joint venture shall be liable only to the extent of its assets.
2. Shareholders of the joint venture shall be liable for joint venture liabilities only to the extent of their shareholdings and commitments in the joint venture.

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## CHAPTER 3

### PROTECTION OF RIGHTS, REMITTANCE OF FUNDS AND TRANSFER OF SHARES

#### 12. Protection of Rights

1. The rights of a joint venture and of shareholders provided for in this Special Decree or in a joint venture agreement shall not be curtailed by another law.
2. Remittance of Funds

#### 13. Remittance of Funds

1. A foreign investor may remit in freely convertible currency incomes obtained in the following manners:
  - a) any dividend received from the activities of a joint venture;
  - b) proceeds received from liquidation of a joint venture;
  - c) Payments received from the sale or transfer of shares.
2. A joint venture may transfer in freely convertible currency:
  - a) payments in respect of debt servicing for a foreign loan incurred pursuant to this Special Decree;
  - b) fees or royalties in respect of any technology transfer agreement relating to a joint venture.
3. Expatriates employed by a joint venture from abroad may remit their salaries in accordance with the Foreign Exchange Regulations of Ethiopia.

#### 14. Transfer of Shares.

1. A shareholder who wants to sell his shares shall first make his offer to the other shareholders of the joint venture.
2. Should the other shareholders fail to communicate their decisions to buy within ninety (90) calendar days of receipt of the offer, the offering shareholder may, without prejudice to Article 4 of this Special Decree, sell the said share to any third party, domestic or foreign, acceptable to the other shareholders.
3. The share prices shall be mutually agreed upon by the parties involved in the transfer.

## CHAPTER 4

### PROMOTION AND FOLLOW UP OF JOINT VENTURES

#### 15. Duties and Responsibilities of the Office Concerning Joint Ventures

The Office shall discharge the following to implement this Special Decree:

1. prepare and disseminate information, on a regular and systematic basis, on the potentials, opportunities and benefits of joint venture investment in Ethiopia;
2. prepare in cooperation with the concerned with the concerned organs, lists covering the types of activities and projects for joint venture investment;

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3. establish the conditions for approval of any investment proposal in joint ventures;
4. advise the State Committee on policies, strategies and other matters necessary for the promotion and encouragement of joint venture investment in Ethiopia;
5. notify the other partners of the state organ or state enterprise or financial agency which is designated to be a partner in a joint venture;
6. receive applications for the formation of joint ventures in Ethiopia;
7. submit, together with its recommendations, joint venture agreements for approval by the State Committee;
8. follow up and monitor the establishment of joint ventures;
9. keep records of established joint ventures;
10. monitor and enforce compliance with the terms and conditions of approval of joint ventures;
11. keep records of technology transfer agreements and amendments thereto relating to joint venture activities;
12. receive from joint ventures annual and other reports as may be necessary;
13. submit to the State Committee annual reports relating to joint venture activities;
14. issue directives to elaborate and facilitate the implementation of this Special Decree;
15. enforce this Special Decree and the Regulations and directives issued for the implementation of this Special Decree;
16. discharge other duties conducive to the attainment of the purpose of this Special Decree.

## **16. Establishment of a Joint Venture Committee**

1. There is hereby established a Joint Venture Committee which shall be accountable to the Office.
2. The Joint Venture Committee shall be composed of the following members, designated by the State Committee:
  - a) a representative of the Office: Chairman
  - b) a representative of the Office of the National Committee for Central Planning: Member
  - c) a representative of the Ministry of Finance
  - d) a representative of the Ethiopian Science and Technology Commission
  - e) a representative of the National Bank of Ethiopia
  - f) a representative of the Ethiopian Chamber of Commerce
  - g) other government official as appropriate, coopted on an ad hoc basis

## **17. Powers and Duties of the Joint venture Committee**

1. The Joint Venture Committee shall screen and recommend the specific actions to be taken in respect of acceptance or refusal of:
  - a) an investment application;

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b) a draft joint venture agreement, amendments thereof or new alterations submitted by a joint venture.

2. The Joint Venture Committee shall carry out such other duties as may be assigned to it by the Office.

## 18. Meetings of The Joint Venture Committee

1. The Joint Venture Committee shall meet as often as its business requires.

2. The presence of more than half of the members shall constitute a quorum.

3. All decisions of the Joint Venture Committee shall be made by a majority vote of those present.

## 19. Responsibilities of Offices

Every office shall, in its respective field, have the following responsibilities regarding joint venture:

1. to notify the office, upon request, of the state enterprise or financial agency under it which it designates as a participant in a joint venture;

2. to submit to the Office the lists and profiles of projects for joint venture investment;

3. to respond to request of the Office on the basis of a priority consideration;

4. to supply or make available land, facilities, and other services required for the establishment and operation of a joint venture on the basis of a priority consideration;

5. in accordance with directives issued by the State Committee, to promote this Special Decree and to motivate possible foreign investors.

## CHAPTER 5

### MANAGEMENT OF JOINT VENTURES

#### 20. Powers and Duties of the Shareholders' Meeting

In addition to its powers and duties provided for in the other provisions of this Special Decree and in the Joint venture agreement, the Shareholder's Meeting shall:

1. appoint the members of the Board of Directors;

2. appoint external auditors;

3. review and approve the annual reports of the Board of Directors, the accounts of the joint venture and reports of the external auditors;

4. subject to Article 37 of this Special Decree,

a) amend the joint venture agreement;

b) dissolve the joint venture and appoint liquidators.

#### 21. The Board of Directors

1. The number of the Board of Directors of a joint venture (hereinafter referred to as the "Board") shall be fixed in the joint venture agreement on the basis of the ratio of equity capital contributed to the joint venture.

2. Where no chairman has been designated by the shareholders' meeting, the Board shall elect a chairman from among its members.

## **22. Powers and Duties of the Board**

In addition to its powers and duties provided for in the other provisions of this Special Decree and in the joint venture agreement, the Board shall discharge the following:

1. decide on policy issues, approve the budget and work programme;
2. appoint the General Manager and the Deputy General Manager of the joint venture;
3. approve loans and credits;
4. establish branch offices as may be necessary;
5. approve the internal regulations of the joint venture;
6. approve the sale of fixed assets;
7. delegate some of its powers to any member of the Board or to the General Manager of the joint venture;
8. submit annual and other reports to the Shareholders' Meeting; and
9. discharge such other duties as may be assigned to it by the Shareholders' Meeting.

## **23. The General Manager**

The General Manager shall be the chief executive of the joint venture and shall, subject to the general direction of the Board:

1. direct and administer the joint venture;
2. represent the joint venture in its relations with third parties;
3. prepare and, upon approval, implement the plans, budget and work programmes of the joint venture;
4. borrow money with the approval of the Board;
5. prepare annual and other reports of the joint venture;
6. open and operate bank accounts in the name of the joint venture;
7. employ and dismiss employees in accordance with the internal regulations of the joint venture and the applicable law;
8. discharge such other duties as may be assigned to him by the Board.

## **24. Employment of Expatriates**

A joint venture may employ qualified expatriate experts to senior positions of the joint venture in accordance with the joint venture agreement.



## CHAPTER 6

### PROCUREMENT, MARKETING AND ACQUISITION OF TECHNOLOGY BY A JOINT VENTURE

#### 25. Procurement and Marketing

1. A joint venture shall, whenever possible, give preference to domestic raw materials, services, and supplies.
2. The parties to the joint venture shall determine in the joint venture agreement to the manner:
  - a) procuring raw materials, and services required for the activities of the joint venture; and
  - b) marketing the products and services of the joint venture.

#### 26. Agreement on Transfer of Technology

1. A joint venture may acquire the necessary technology from a shareholder of the joint venture or from a third party on the basis of a transfer of technology agreement.
2. The transfer of technology agreement is subject to review and approval by the concerned government authority.
3. Where a transfer of technology agreement has been approved, a certificate of such approval shall be issued by the approving government authority.

## CHAPTER 7

### INCENTIVES, FINANCES AND FOREIGN EXCHANGE REGULATION

#### 27. Exemption from Customs Duties and Taxes

1. Machinery, equipment and the first round of spare parts thereof imported by the joint venture prior to the commencement of operation which are necessary for its activities shall be free from customs duties, and government and municipal laws levied on imports.
2. The exemption from customs duties and tax provided for in sub-article 1 of this Article shall apply where major expansions are undertaken by the joint venture as ascertained by the Office.
3. A joint venture may be granted total or partial exemption, for the period to be specified in the joint venture agreement, from the payment of customs duties and government and municipal taxes levied on imports, with respect to raw materials and other production goods which are necessary inputs to its services and products.
4. A joint venture shall be exempt, with respect to goods it exports, from the payment of customs duties and transaction taxes levied on exports.
5. A joint venture shall be granted exemption from the payment of income tax for a period of:
  - a) five (5) years for new projects;
  - b) three (3) years for major expansions of existing projects and in respect only of such expansions, starting from the first harvest in the case of agricultural projects or the commencement of operation in the case of non-agricultural projects.
6. Any dividend received by a shareholder which is reinvested in Ethiopia shall be exempt from the payment of income tax.

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7. Any dividend remitted abroad shall be taxed at the rate of 10% of the amount remitted.

8. The salaries and allowances of expatriate personnel of a joint venture who are not permanent residents in Ethiopia shall be exempt from the payment of income tax.

9. Any remittance abroad, pursuant to sub-article 1(b) and 1(c) of Article 13 of this Special Decree, by a foreign shareholder including an Ethiopian shareholder residing abroad shall be effected without the payment of any tax.

10. After the expiry of the period of exemption referred to in sub-article 5 of this Article, a joint venture shall pay income tax on its taxable income in accordance with the Ethiopian tax law, at the rate of forty percent (40%) per annum.

## **28. Carry Forward of Losses**

Any loss incurred by a joint venture may be carried forward for three consecutive years.

## **29. Reserve Funds**

1. A joint venture shall establish a reserve fund and 5% of each year's net profits of the joint venture shall be set aside as reserve until such time as the said reserve reaches at least 20% of the capital of the joint venture.

2. The Board may create other reserves.

## **30. Distribution of Profits**

Profits obtained from the activities of a joint venture may be distributed to the shareholders only after deductions for the reserves specified in article 29 of this Special Decree are made.

## **31. Books of Accounts**

A joint venture shall keep such books of accounts as are necessary in accordance with generally accepted accounting principles and practices.

## **32. Appointment of Auditors**

The external auditors of a joint venture shall be appointed annually by the Shareholders' Meeting.

## **33. Foreign Currency Bank Account**

A joint venture may open operate foreign currency bank accounts in Ethiopia or abroad in accordance with the Foreign Exchange Regulations of Ethiopia.

## **34. Privileges for Expatriate Personnel Employed form Abroad**

Expatriate personnel employed from abroad by a joint venture shall be entitled to import free of customs duties their personal effects in accordance with the appropriate directives in force.

## **35. Duration of a Joint Venture**

The duration of a joint venture shall be agreed upon by the Shareholders in the joint venture agreement.

## **36. Settlement of Disputes**

1. The mode of settlement of disputes arising from the joint venture agreement shall be as stipulated in the joint venture agreement.

2. The relevant Ethiopian law shall apply to such disputes.

### **37. Two-Third Majority Required**

Except under those conditions provided for in Article 38, no decision to dissolve a joint venture or to amend a joint venture agreement shall be made unless the shareholders representing at least two thirds of the total shares vote in favor of such dissolution or amendment, as the case may be.

### **38. Dissolution and Liquidation of a Joint Venture**

A joint venture may be dissolved and liquidated if any one of the following situations occur:

- a) expiration of the duration of the joint venture;
- b) inability to continue operations due to losses whatever the causes may be;
- c) failure of shareholders to meet their obligations stipulated in the joint venture agreement which is decisive of the existence of the joint venture;
- d) inability to continue operation due to force majeure as stipulated in the joint venture agreement;