AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF REPUBLIC OF TAJIKISTAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the People's Republic of China and the Government of the Republic of Tajikistan (hereinafter referred to as the "Parties"),

Desiring to promote further economic cooperation between them with respect to investment;

Recognizing that agreement on the treatment to be accorded to investment will stimulate the flow of capital and the economic development of the Parties;

Agreeing that a stable, transparent, and non-discriminatory framework for investment will enhance the effective use of economic resources and improve living standards;

Recognizing the importance of providing effective means and procedures to protect rights and interests with respect to investment under national law as well as through international arbitration;

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment;

Recognizing the right to regulate, and resolving to preserve the flexibility of the Parties to protect legitimate public welfare objectives, including public morals, public health, safety, the environment, and the conservation of living or non-living exhaustible natural resources;

Have agreed as follows:

Section A. Investment Promotion and Protection

Article 1. Definitions

For purposes of this Agreement:

“claimant” means an investor of a Party that is a party to an investment dispute with the other Party.

“covered investment” means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter.

“disputing parties” means the claimant and the respondent.

“disputing party” means either the claimant or the respondent.

“enterprise” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise.

“enterprise of a Party” means an enterprise constituted or organized under the law of a Party and a branch located in the territory of a Party and carrying out business activities there.

“existing” means in effect on the date of entry into force of this Agreement.

“freely usable currency” means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement.

“government procurement” means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

“ICSID Additional Facility Rules” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

“ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965.

“investment” means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, loans, and other debt instruments, including debt instruments issued by a Party or an enterprise; (1)

(1) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (2) and

(2) The term “investment” does not include an order or judgment entered in a judicial or administrative action.

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

“investment agreement” means a written agreement between a national authority (3) of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(3) For purposes of this definition, “national authority” means an agency of the central government. 4 National does not include any natural person who had the nationality of the Party to the dispute submitted by him or her under Section B on the date on which the investment involved in the dispute was made.

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government.

“investor of a Party” means a Party, a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

“measure” includes any law, regulation, procedure, requirement, or practice.

“national” means: (4)

(a) for the People's Republic of China,

a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and

(b) for the Republic of Tajikistan,

a natural person who is a national of the Republic of Tajikistan as defined in the Nationality Law of the Republic of Tajikistan.

"non-disputing Party" means the Party that is not a party to an investment dispute.

"person" means a natural person or an enterprise.

"protected information" means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law.

"respondent" means the Party that is a party to an investment dispute. "territory" means: (5)

(5) For greater certainty, the definition of "territory" for each Party is for the purposes of this Agreement only and is without prejudice to the position of either Party regarding the recognition of any territorial or maritime claims.

(a) with respect to the People's Republic of China,

(i) the customs territory of the People's Republic of China; (6)

(6) For purposes of this Agreement, "customs territory of the People's Republic of China" means China's entire customs territory to which the World Trade Organization Agreement applies, as defined in paragraph2(A)(1) of Part I of the Protocol on the Accession of the People's Republic of China to the MarrakeshAgreement Establishing the World Trade Organization.

(ii) the territorial sea thereof and any area beyond the territorial sea within which the People's Republic of China may exercise sovereignty, sovereign rights or jurisdiction under its law.

(b) with respect to the Republic of Tajikistan, the customs territory of the Republic of Tajikistan.

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement.

"UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

Article 2. Scope and Coverage

1. This Agreement applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. A Party's obligations under Section A shall apply:

(a) to all levels of government of that Party; and

(b) to any non-governmental body when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.

3. For greater certainty, this Agreement does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 3. National Treatment (7)

Each Party shall accord to investors of the other Party, and to covered investments, treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

(7) For greater certainty, whether treatment is accorded in “like circumstances” under Article 3 (National Treatment) or Article 4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 4. Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, and to covered investments, treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Paragraph 1 of this Article shall not be construed to oblige any Party to extend to the investors of the other Party or covered investment any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B, that are provided for in international investment or trade agreements.

Article 5. Minimum Standard of Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law minimum standard of treatment of aliens. (8)

(8) The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in this Article results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

2. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 of this article to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with due process of law; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

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

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 6. Compensation for Losses

1. Notwithstanding paragraph 3 of Article 15 [Non-Conforming Measures], each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, a state of national emergency, or civil strife.

2. Notwithstanding paragraph 1 of this article, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be made in accordance with paragraphs 2 through 4 of Article 7 [Expropriation and Compensation],

mutatis mutandis.

Article 7. Expropriation and Compensation

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of compensation in accordance with this Article; and

(d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) of this article shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place ("the date of expropriation"), whichever is earlier; and

(c) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) of this article shall be no less than the fair market value on the date of public announcement of expropriation or on the date of expropriation, whichever is earlier, plus interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment, as appropriate.

4.If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) of this article converted into the currency of payment at the market rate of exchange prevailing on the date of payment shall be no less than:

(a) the fair market value on the date of public announcement of expropriation or on the date of expropriation, whichever is earlier, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest at a commercially reasonable rate for that freely usable currency accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

6. The Parties confirm their shared understanding that:

(a) An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

(b) This article addresses two situations: The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure. The second is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(c) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character and objective of the government action.

(d) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public moral, public health, safety, and the environment, do not constitute

indirect expropriations.

Article 8. Transfers (9)

(9) (a) Article 8 [Transfer] does not affect China's ability to administer its capital account for the maintenance of the stability and soundness of its financial system, such as the foreign exchange market, stock market, bond market and financial derivatives market, to the extent that all transfers relating to covered investment established or acquired through establishment of an enterprise shall not be affected. (b) The foreign exchange administration referred in this footnote shall not be used as a means of prohibiting transferred relating to a covered investment.

1.Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 6 [Compensation for Losses] and Article 7 [Expropriation and Compensation];

(f) payments arising out of a dispute; and

(g) earnings and remuneration of a national of a Party who works ina covered investment in the territory of the other Party.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3.Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

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

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

(c) criminal or penal offenses;

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

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

(f) securing compliance with other laws and regulations that are not inconsistent with this Agreement.

5. In the event of serious balance-of-payments difficulties, external financial difficulties, or threat thereof, nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital. Any measures adopted or maintained under this paragraph shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) be temporary and be phased out progressively as the situation specified in this paragraph improves, and shall not exceed eighteen months in duration; however, if extremely exceptional circumstances arise, a Party may extend such measures for one twelve-month period after advance notice and consultations with the other Party;

(c) not be inconsistent with Article 3 [National Treatment] and Article 4 [Most Favored Nation Treatment];

(d) not be inconsistent with Article 7 [Expropriation and Compensation];

(e) not result in multiple exchange rates; and

(f) be promptly notified to the other Party and published as soon as practicable.

Article 9. Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of the other Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (10)

(10) For greater certainty, a condition for the receipt or continued receipt of an advantage referred toinparagraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content of goods or services;

(c) to purchase, use, or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from persons or enterprises in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market;

(h) (i) to purchase, use or accord preference to, in its territory, technology of the Party or of persons of the Party (11);

(11) For purpose of this Article, the term "technology of the Party or of persons of the Party" includes technology that is owned by the Party or persons of the Party, and technology for which the Party holds, or persons of the Party hold, an exclusive license.

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, particular technology,

so as to afford protection on the basis of nationality to its own investors or investments or to technology of the Party or of persons of the Party;

(i) to locate the headquarters for a specific region or the world market in its territory; or

(j) to achieve a give percentage or value of research and development in its territory.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3.(a)Nothing in paragraph 1 of this article shall be construed to prevent a Party, in connection with an investment in its territory of an investor of the other Party or of a non-Party, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such measure is consistent with paragraph 1(f) of this article.

(b) Nothing in paragraph 2 shall be construed to prevent a Party, in connection with an investment in its territory of an investor of the other Party or of a non-Party, from conditioning the receipt or continued receipt of an advantage on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(c) Paragraphs 1(f) of this article does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws.

(d) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraph 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii)related to the conservation of living and non-living exhaustible natural resources.

(e) Paragraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(f) Paragraphs 1(b), (c), and (f), and 2(a) and (b), do not apply to government procurement.

(g) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 10. Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management position natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 11. Entry of Personnel

1. Subject to its measures relating to public health and safety and national security applicable to the entry and sojourn, a Party shall allow the entry and temporary stay of the following personnel:

(a) business visitors: nationals of the other Party who are establishing, or have established an enterprise in its territory to enter and remain temporarily in its territory, including nationals of the other Party working in a senior position in an enterprise of the other Party, who are responsible for setting up an enterprise in its territory.

(b) intra-corporate transferees: managers, executives and specialists defined as senior employees of an enterprise of the other Party that has established an enterprise in its territory, temporarily moving as intra-corporate transferees.

2. The permissible length of stay shall be up to 90 days for business visitors, and up to three years for intra-corporate transferees.

3. This article does not apply to business visitors and intra-corporate transferees employed by a non-profit organization.

Article 12. Transparency

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made publicly available.

2. Publication of Proposed Investment-related Measures

(a) To the extent possible, each Party should:

(i) publish in advance any measure referred to in paragraph 1 of this Article that it proposes to adopt; and

(ii) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

(b) With respect to proposed laws and regulations of general application respecting any matter covered by this Agreement that are published in accordance with paragraph 1 of this Article, each Party:

(i) shall publish the proposed laws and regulations on an official website or in an official journal or national circulation;

(ii) should in most cases, publish the proposed laws and regulations no less than 30 days before the date public comments are due; and

(iii) shall endeavour to take into account the comments received from interested persons with respect to such proposed laws and regulations.

(c) With respect to laws and regulations of general application that are adopted respecting any matter covered by this Agreement, each Party shall:

(i) publish laws and regulations on an official website or in an official journal or national circulation; and

(ii) to the extent possible, ensure that there is reasonable time between publication and entry into force of the laws and regulations.

3. Publication of other Investment-related Information

Each Party shall make available via electronic means information of importance to investors, and keep the information updated, as appropriate. Such information includes:

(a) information on which sectors are open, restricted or prohibited to foreign direct investment;

(b) where practicable, information on the practical steps relevant to invest in its territory. This information should cover, inter alia, the requirements and procedures, where they exist, related to:

(i) company establishment and business registration;

(ii) connecting to essential infrastructure;

(iii) acquisition and registering of property;

(iv) construction permits;

(v) capital transfers and payments;

(vi) the payment of taxes;

(vii) public incentives available to investors; and

(viii) resolving insolvency;

(c) contact information of relevant competent authorities.

4. Single Information Portal

(a) To the extent practicable, each Party shall endeavor to make available measures and information referred to in paragraphs 1 to 3 through a single information portal, which includes making available the relevant web links to electronic publications.

(b) Each Party shall endeavour to ensure that the single information portal is kept updated.

5. No Fees Imposed for Access to Information

No fee shall be imposed on investor of the other Party for access to the measures or information provided under this Article.

Article 13. Licensing Requirements and Procedures

1. The following disciplines apply to measures adopted or maintained by a Party relating to licensing requirements and procedures that affect establishment and operation of covered investment in the territory of such Party.

2. These disciplines do not apply to applications for and extensions of visas, residence permits and work permits.

3. Each Party, with a view to precluding the competent authorities from exercising their power of assessment in an arbitrary manner, shall ensure that measures relating to licensing requirements and procedures are based on the following criteria:

(a) clear;

(b) objective and transparent;

(c) pre-established, made public in advance and accessible.

4. Licensing procedures shall be clear, as simple as feasible, made public in advance and shall not unduly complicate or delay the making of an investment.

5. Any authorization fees (12) charged by the competent authority from an applicant in connection with the establishment and acquisition of an enterprise, including those charged for the amendment or renewal of such authorization, should be reasonable and commensurate with the administrative cost of the authorization procedures in question. Each Party shall endeavor to periodically review its authorization fees with a view to reducing their number and diversity.

6. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. The applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

7.Each Party shall ensure that a licence or an authorization, once granted, enters into effect without undue delay.

(12) Authorization fees do not include payments for natural resources, auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Article 14. Investment and Climate Change

Recognizing the importance of pursuing the ultimate objective of the UN Framework Convention on Climate Change of 1992, and the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC in 2015 in order to combat climate change and its impacts, and committed to enhance the contribution of investment to climate change mitigation and adaptation, each Party shall promote and facilitate investment of relevance for climate change mitigation and adaptation (13).

(13) Such investment shall include investment concerning climate-friendly goods, raw materials and services, such as renewable energy, low-carbon technologies, energy-efficient goods and services, and raw materials essential to producing such goods or providing such services.

Article 15. Non-Conforming Measures

1. Articles 3 [National Treatment], 4 [Most-Favored-Nation Treatment], 9 [Performance Requirement] and 10 [Senior Management and Board of Directors] do not apply to:

(a) any existing non-conforming measures maintained within its territory;

(b) the continuation of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

2. Articles 3 [National Treatment] and 4 [Most-Favored-Nation Treatment] do not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

3. Articles 3 [National Treatment] and 4 [Most-Favored-Nation Treatment] do not apply to subsidies or grants provided by a

Party, including government-supported loans, guarantees, and insurance.

4. Articles 3 [National Treatment] and 4 [Most-Favored-Nation Treatment] do not apply to government procurement.

5.The Parties will endeavor to progressively remove the non-conforming measures.

Article 16. Special Formalities and Information Requirements

1. Nothing in Article 3 [National Treatment] shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement on the filing for establishment of and changes to the covered investments of the other Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Agreement.

2. Notwithstanding Articles 3 [National Treatment] and 4 [Most-Favored-Nation Treatment], a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical or administrative purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 17. Subrogation

If a Party (or any statutory body, governmental agency or institution, or corporation designated by the Party) makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party, in whose territory the covered investment was made, shall recognize the subrogation or transfer of any rights the investor would have possessed under this Agreement with respect to the covered investment but for the subrogation, including any rights under Section B, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.

Article 18. Denial of Benefits

1. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B of this Agreement, deny the benefits (14) of this Agreement to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if a non-Party, or persons of a non-Party own or control the enterprise and the denying Party:

(14) For greater certainty, benefits referred to in this Article include the rights of an investor of a Party to resort to the dispute settlement mechanism set out in Section B of this Agreement.

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B of this Agreement, deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and a non-Party, persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 19. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to protected information, or other confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 20. Essential Security

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. With respect to investors of the other Party and covered investments affected by such measures, each Party shall accord non-discriminatory treatment to them, regardless of whether they are governmentally or privately owned.

Article 21. Prudential Measures

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system. (15)

(15) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or the financial system, as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

2. Nothing in this Agreement applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies (16). This paragraph shall not affect a Party's obligations under Article 8 [Transfers].

(16) For greater certainty, measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies do not include measures that expressly nullify or amend contractual provisions that specify the currency of denomination or the rate of exchange of currencies.

Article 22. Entry Into Force, Duration, and Termination

1. The Parties shall notify each other in writing through diplomatic channels of the fulfillment of their domestic legal procedures in relation to the ratification and entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the receipt of the later of the two notifications. It shall remain in force for a period of fifteen years and shall continue in force thereafter unless terminated in accordance with paragraph 2.

2. A Party may terminate this Agreement at the end of the initial fifteen-year period or at any time thereafter by giving written notice to the other Party one year in advance. Termination shall take effect one year after the date of receipt of the written notice.

3. With respect to covered investments made prior to the date of termination of this Agreement, all other Articles shall continue to be effective for an additional fifteen-year period from the date of termination.

4. Upon entry into force of this Agreement, Agreement between the Government of the Peopleâs Republic of China and the Government of the Republic of Tajikistan for the Promotion and Reciprocal Protection of Investments, signed on 9 March 1993, shall automatically terminate.

Section B. Investor-State Dispute Settlement

Article 23. Consultations

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, it shall deliver a request for consultations to the respondent at least 180 days prior to submission of the dispute to arbitration. The request shall:

(a) specify the name and address of the claimant;

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

(c) for each claim, identify the measures or events giving rise to the claim;

(d) specify the relief sought and the approximate amount of damages claimed.

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall enter into consultations (17) with a view to reaching a mutually satisfactory solution.

(17) Unless otherwise agreed by the parties to the dispute, the place for consultation should be the capital of the respondent.

Article 24. Submission of a Claim to Arbitration

1. In the event that the claimant considers that an investment dispute cannot be settled by consultations pursuant to Article 23 [Consultations] and 180 days have elapsed since the date of the request for consultations, the claimant may submit to arbitration under this Section a claim:

(a) that the respondent has breached

(i) an obligation under Article 3 [National Treatment], Article 4. [Most-Favored Nation Treatment], provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;

(ii) an obligation under Article 5 [Minimum Standard of Treatment], Article 6 [Compensation for Losses], Article 7 [Expropriation and Compensation], Article 8 [Transfers], Article 9 [Performance Requirement], and Article 10 [Senior Management and Board of Directors]; or

(iii) an investment agreement; and

(b) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under this Article and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

(a) an enterprise of a non-Party that owns or controls, directly or indirectly, the investor of a Party; or

(b) an enterprise of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

Notwithstanding this paragraph, the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the enterprise of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1 of this article:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

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

(c) under the UNCITRAL Arbitration Rules (18); or

(18) In the case of arbitration under Section B pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. The arbitration rules applicable under paragraph 3 of this article, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

Article 25. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than six years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 24 [Submission of a Claim to Arbitration] 1(a) and knowledge that the claimant has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement;

(b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 23 [Consultations]; and

(c) the notice of arbitration is accompanied by the claimant's written waiver, of any right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 24 [Submission of a Claim to Arbitration].

Article 26. Constitution of the Tribunal

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General of ICSID shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.

4. The appointing authority may not appoint a presiding arbitrator who is a national of a Party, unless both parties to the dispute otherwise agree.

5.In the event that the appointing authority appoints a presiding arbitrator in accordance with relevant arbitration rules, the presiding arbitrator being appointed should be a recognized expert in public international law, and should be experienced in investor-state dispute settlement.

Article 27. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under paragraph 30f Article 24 [Submission of a Claim to Arbitration]. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. Notwithstanding paragraph 2, without written consent of the disputing parties, the tribunal shall have no authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.

Article 28. Governing Law

1. Subject to paragraph 3, when a claim is submitted under paragraphs 1(a)(i) or 1(a)(ii) of Article 24 [Submission of a Claim to Arbitration], the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law (19).

(19) For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.

2. Subject to paragraph 3 of this article and the other terms of this Section, when a claim is submitted under paragraph 1(a)(iii) of Article 24 [Submission of a Claim to Arbitration], the tribunal shall apply:

(a) the rules of law specified in the pertinent investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws (20); and

(20) The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

(ii) such rules of customary international law as may be applicable.

3. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

Article 29. Awards

1. Where a tribunal makes an award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, 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 attorney's fees in accordance with this Section and the applicable arbitration rules.

2. A tribunal may not award punitive damages.

3. The award shall be made available to the public promptly. (21)

(21) For greater certainty, nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 19 [Disclosure of Information] or Article 20 [Essential Security].

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

Article 30. Service of Documents

Delivery of notice and other documents on a Party under Section B and C shall be made to the place named for that Party as listed out:

(a)For the People's Republic of China,

Department of Treaty and Law,

Ministry of Commerce of the People's Republic of China,

2 Dong Chang'an Avenue, Beijing, 100731,

People's Republic of China;

(b) For the Republic of Tajikistan,

Principal Department on Investment,

State Committee for Investment and State Property Management,

27 Shotemur Street, Dushanbe City, 734025,

Republic of Tajikistan.

Section C. State-State Dispute Settlement

Article 31. Consultations

1. In the event of a dispute subject to this Section, if the complaining Party intends to submit the dispute to arbitration, it shall deliver a request for consultations to the responding Party at least 180 days prior to submission of the dispute to

arbitration, setting out its claims with respect to the interpretation or application of this Agreement.

2. At the receipt of such request for consultation, the Parties shall enter into consultations with a view to reaching a mutually satisfactory solution.

Article 32. Conduct of Arbitration

1. In the event that the dispute has not been settled by consultations pursuant to Article 31 [Consultations] of this Section and 180 days have elapsed since the date of the request for consultations, the complaining Party may submit its claims to arbitration in accordance with this Section and applicable rules of international law.

2. Unless the Parties agree otherwise, the UNCITRAL Arbitration Rules in effect on the date the claims were submitted to arbitration under this Section, shall govern the conduct of arbitration, except as modified by the Parties or this Agreement.

3. Articles 26 [Constitution of the Tribunal] and 28 [Governing Law] shall apply mutatis mutandis under this Section.

Article 33. Awards

1. Where a tribunal makes a final decision or award against a responding Party with respect to:

(a) a dispute concerning the interpretation or application of this Agreement, excluding a dispute referred to in sub-paragraph (b), the tribunal shall provide:

(i) a determination that the responding Party has acted inconsistently with the obligations of this Agreement; and

(ii) recommendations, if the Parties have jointly requested them, for resolution of the dispute;

(b) a dispute in which a Party exercised diplomatic protection on behalf of its investor for claims of breach of Articles 3 [National Treatment], Articles 4 [Most Favored Nation Treatment], Article 5 [Minimum Standard of Treatment], Article 6, [Compensation for Losses], Article 7 [Expropriation and Compensation], Article 8 [Transfers], Article 9 [Performance Requirement], and Article 10 [Senior Management and Board of Directors], the tribunal shall provide appropriate relief in accordance with the applicable rules of international law.

2.If the tribunal provide a determination referred to in paragraph 1(a)(i) that the measure at issue is inconsistent with a Party's obligations under this Agreement or a Party has otherwise failed to carry out its obligations under this Agreement, the responding Party shall eliminate the non-conformity or the nullification or impairment.

3. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the tribunal may, in its discretion, direct that a higher proportion of the costs be paid by one of the Parties, in accordance with this Agreement and the applicable arbitration rules.

4. A tribunal may not award punitive damages.

5. The tribunal shall reach its award by a majority of votes.

IN WITNESS WHEREOF, the duly authorized representatives of their respective governments have signed this Agreement.

DONE in duplicate at Dushanbe on 5 July 2024 in the Chinese, Tajik and English languages, all texts being equally authentic. In case of any discrepancy or inconsistency, the English version shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN

Sulton Rakhimzoda

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

Wang Wentao