

# **AGREEMENT BETWEEN THE REPUBLIC OF CHINA (TAIWAN) AND THE REPUBLIC OF THE GAMBIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT**

The Republic of China (Taiwan) and the Republic of the Gambia hereinafter referred to as the Contracting Parties;

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

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion Agreement will be conducive to the stimuli and will increase the prosperity in both

Have agreed as follows:

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## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and in particular, though not exclusively, includes::

- (a) an enterprise;
- (b) movable and immovable property and any other property rights such as mortgages, liens, and pledges;
- (c) shares and any other form of participation in an enterprise;
- (d) claims to money or to any performance under contract having economic value and associated with an investment;
- (e) intellectual property rights, technical processes, know-how and goodwill;
- (f) rights to undertake economic and commercial activities, conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such change has been made in conformity with the laws and regulations of the hosting Contracting Party.

2. The term "investor" refers to the natural persons or enterprises of either Contracting Party who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement.

- (a) natural persons who according to the laws of that Contracting Party, are considered to be its nationals; or
- (b) enterprises constituted under the laws of that Contracting Party and having its seat or its headquarters together with effective economic activities in the territory of that same Contracting Party.

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

3. The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties and fees.

4. The term " territory " means the territory of either Contracting Party, including the land territory, internal waters, the territorial sea and the airspace above them, as well as the exclusive economic zone and the continental shelf that extend beyond the territorial sea over which the Contracting Party concerned exercises sovereign rights or jurisdiction in accordance with international law and its domestic legislation.

## **Article 2. Promotion and Admission of Investments**

1. Each Contracting Party shall, within the framework of its laws and regulations, create favourable conditions for attraction of investments of investors of the other Contracting Party in its territory.
2. Each Contracting Party shall admit investments of investors of the other Contracting Party in its territory in accordance with its laws and regulations.
3. When one Contracting Party admits an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

## **Article 3. Protection of Investments**

1. Investments made by investors of one Contracting Party in th territory of the other Contracting Party shall be accorde fair and equitable treatment and shall enjoy full protection and security in accordance with customary international law.
2. Neither Contracting Party shall impair by unreasonable or discriminatory measures the expansion, management, maintenance, use, enjoyment or disposal of such investments.

## **Article 4. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords, in like circumstances, to the investments made by its own investors or by investors of any third State whichever is more favourable to the investor concerned.
2. Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards the expansion, management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords, in like circumstances, to its own investors or to investors of any third State whichever is more favourable to the investor concerned.
3. The treatment granted under this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:
  - (a) its membership of, or association with, any existing or future free trade area, customs, economic or monetary union or other similar international agreements including other forms of regional economic organization, or
  - (b) any international agreement or arrangement relating taxation or any domestic legislation relating wholly or mainly to taxation.

## **Article 5. Other Measures**

1. A Contracting Party may not require that an enterprise of that Contracting Party that is an investment under this Agreement appoint to senior management positions individuals of any particular nationality.
2. A Contracting Party may require that a majority of the boar of directors, or any committee thereof, of an enterprise tha is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contractin Party, provided that the requirement does not materiall impair the ability of the investor to exercise control over its investment.
3. Except matters related to government procurement, subsidies, research and development, locating production, grants insurance, guarantees, and loans provided or supported by each Contracting Party, neither Contracting Party may impose any of the following requirements in connection with permitting the establishment or acquisition of an investment or enforce any of the following requirements in connectio with the subsequent regulation of that investment:
  - (a) to export a given level or percentage of goods;

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

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

(e) to transfer technology, a production process or other proprietary knowledge to a person in its territory unaffiliated with the transferor, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, either to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement.

4. Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall grant entry to persons of the other Contracting Party employed by an enterprise who seek to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial or executive.

5. This Agreement shall not apply to any investment or investor relating to;

(a) government procurement; or

(b) subsidies, grants, including government - supported loans, guarantees, and insurance.

6. This Agreement shall not apply to any non-conforming measure maintained by a Contracting Party at the central or local level of government existing upon the entry into force of this Agreement or any future amendment thereto provided that such amendment does not increase its non-conforming effect.

## **Article 6. Expropriation and Compensation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as expropriation) except for public interest, in accordance with due process of law, on a non-discriminatory basis and upon payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or before the impending expropriation became publicly known, whichever is earlier (hereinafter referred to as the valuation date).

3. Such market value shall be expressed in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.

## **Article 7. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

## **Article 8. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payment relating to their investments. Such transfers shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase the investment;

(b) investment returns, as defined in Article 1;

(c) funds in repayment of loans related to an investment;

(d) compensations provided for under Articles 6 and 7;

- (e) proceeds from the total or partial sale or liquidation of an investment;
- (f) earnings and other remuneration of personnel in connection with an investment;
- (g) payments arising out of the settlement of a dispute.

2. Transfers under this present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange applicable on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) ensuring the satisfaction of judgments in judicial or administrative proceedings.

## **Article 9. Transparency**

Each Contracting Party shall, to the extent practicable, 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 in such a manner as to enable interested persons and the other Contracting Party to become acquainted with them.

## **Article 10. Subrogation**

If a Contracting Party or its designated agency makes a payment under an insurance or guarantee agreement against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party,

- (a) the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency, and
- (b) the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title.

## **Article 11. Observance of Commitments**

Either Contracting Party shall guarantee the observance of commitments it has entered into with respect to investments of investors of the other Contracting Party.

## **Article 12. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible be settled through consultations.

2. If it were not possible to settle the dispute in this way within six months from the start of the consultations, it shall be submitted, at the request of both Contracting Parties, to an arbitral tribunal.

3. The arbitral tribunal shall be constituted in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed as Chairman of the tribunal. These two arbitrators, each selected by a Contracting Party, shall be appointed within sixty days from the receipt of the request for arbitration and the Chairman shall be appointed within sixty days from the date of appointment of these two arbitrators.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may in the absence of any other agreement, invite the International Court of Arbitration of the International Chamber of Commerce to make the necessary appointments.

5. The arbitral tribunal shall issue its decision on the basis of the provisions contained in this Agreement as well as the rules and principles of international law as may be applicable.
6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall determine its own procedure and the place of arbitration.
7. The arbitral tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal shall be rendered within six months of the appointment of the Chairman in accordance with paragraph 3 or 4 of this Article.
8. Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne equally by the two Contracting Parties.

### **Article 13. Settlement of Disputes between a Contracting Party and Investors of the other Contracting Party**

1. For the purpose of this Article, an investment dispute is a dispute between one Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of this Agreement with respect to an investment of such investor. The investment dispute shall be notified in writing by such investor to the Contracting Party in dispute.
2. Any such dispute shall, as far as possible, be settled amicably through negotiation between the parties to the dispute.
3. Any such dispute which has not been settled amicably may be submitted to the domestic competent judicial or administrative authorities of the Contracting Party which has approved the investment for resolution in accordance with the laws of that approving Contracting Party.
4. If the dispute cannot thus be settled within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted to an ad hoc arbitral tribunal for settlement only if:
  - (a) both the investor and the Contracting Party in dispute have consented in writing thereto;
  - (b) the investor has waived its right to initiate or continue any other proceedings in relation to the dispute; and
  - (c) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.
5. For such ad hoc arbitral tribunal, the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 shall govern. The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party to the dispute.
6. The secretarial work of such ad hoc arbitral tribunal shall be referred to the International Chamber of Commerce, if possible.
7. The arbitration award shall be final and binding upon both parties to the dispute. Each Contracting Party shall commit itself to the enforcement of the award in accordance with its relevant laws and regulations.

### **Article 14. Consultations**

Either Contracting Party may propose to the other Contracting Party that consultations be held on any matter concerning interpretation or application of the Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

### **Article 15. Application and General Exceptions**

1. This Agreement shall apply to investments in the territory of one Contracting Party made, in accordance with its national laws and regulations, by investors of the other Contracting Party whether prior to or after its entry into force.
2. Except as otherwise provided in this Agreement, all investments will be governed by the laws in force in the territory in which such investments are made.
3. If the provisions of law of either Contracting Party or obligations under international law existing at present or established

hereafter between the Contracting Parties in addition to this Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement.

4. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure that it considers necessary to protect its own essential security interests.

5. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:

(a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) relating to the conservation of living or non-living exhaustible natural resources.

## **Article 16. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other when their respective domestic requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for an initial period of ten years. After the expiration of the initial period of ten years, it shall continue in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement at the end of the initial nine-year period or at any time thereafter. The notice of termination shall become effective one year after the date of that notification.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall remain in force for a further period of ten years from the date of termination of this Agreement.

4. The provisions of this Agreement may be modified, through amendment mutually agreed upon in writing, by the Contracting Parties. The Amendment shall enter into force in accordance with the procedure in Paragraph 1 of this Article.

IN WITNESS WHEREOF the respective plenipotentiaries have signed this Agreement..

DONE in duplicate at Taipei this 8th day of June, 2010 in the Chinese and English languages, all texts being equally authentic. However, in case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF CHINA (TAIWAN)

Yen-Shiang Shih

Minister of Economic Affairs

FOR THE REPUBLIC OF THE GAMBIA

Yusupha Alieu Kah

Minister of Economic Planning and Industrial Development