

# **AGREEMENT BETWEEN THE REPUBLIC OF CHINA AND THE REPUBLIC OF EL SALVADOR ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of China and the Government of the Republic of El Salvador, hereinafter "the Parties";

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

Having the intention to create and maintain favorable conditions for investment by investors of one Party in the territory of the other Party; and,

Recognizing the need to promote and protect such investments in order to favor the economic prosperity of both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investor" designates, for each Party:

a. natural persons who are considered nationals of the Party under its laws; and,

b. legal entities, including companies, corporations, commercial associations or any other entity constituted or organized otherwise under the laws of that Party

2. The term "investment" refers to every kind of asset or rights related to the investment, carried out under the laws and regulations of the Party in whose territory it was made, particularly:

a. movable and immovable property, as well as every other real property right, such as easements, mortgages, usufruct and pledges;

b. shares, stocks, debentures and any other form of interests in companies or other forms of business entities;

c. title to money, rights derived from claims or any other performance or benefit having an economic value;

d. intellectual property rights, such as copyrights and industrial property rights, including but not limited to patents, technical processes, trade marks or trade brands, trade names, industrial designs, know-how, goodwill and business name; or,

e. concessions granted by law or by virtue of a contract, including concessions to search for, work, farm, extract, mines or exploit natural resources;

3. "territory" comprises, land, maritime and airspace under the sovereignty of each Party.

## **Article 2. Scope of the Agreement**

This Agreement applies to:

1. investors of the other Party, in everything related to their investment; and,

2. investments of investors of a Party carried out in the territory of the other before or after the entry into force of this Agreement.

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

1. Each Party shall, within its internal legislation on foreign investment, promote in its territory the investments of the other Party.

2. Each Party shall, within its territory, protect the investments carried out under its laws and regulations by investors of the other Party, and shall not hinder the administration, use, usufruct, extension, sale and liquidation of such investments, through unjustified and discriminatory measures.

#### **Article 4. Compliance of Law**

It is understood that the investors shall abide by the obligations and responsibilities pertaining to their investment and obey the national laws and regulations of the receptive country of the investment, which shall be enforced in an equitable and non-discriminatory manner.

#### **Article 5. Investments Treatment**

1. Each Party shall accord treatment to investments of investors of the other Party, carried out in its territory, no less favourable than it accords to investors of a third country, if this is more favourable.

2. If one of the parties has accorded a special treatment to investments from a third country by virtue of agreements establishing measures to avoid double taxation, free trade areas, customs unions, common markets, economic or monetary unions and similar institutions, that Party shall not be obliged to accord such treatment to the investors or to the investments of the other Party.

#### **Article 6. Top Management and Administrative and Operational Staff**

Each Party shall permit investors of the other Party to designate individuals of their choice for top managerial positions or to be part of their administrative and operational staff, regardless of the nationality of such individuals, in accordance with relevant laws of each party.

#### **Article 7. Transfers**

1. The Party in whose territory an investment has been made, shall guarantee the investors of the other Party, the free transference of the payments related to those investments.

Such transfers include:

- a. profits, dividends, interests, capital gains, royalty payments, management fees, technical assistance, earnings in kind and other amounts derived from the investment;
- b. proceeds from the sale partial or complete liquidation of the investment;
- c. payments made under a contract to which the investor or his investment is part, including payments made under a loan agreement;

2. Each Party shall permit transfers to be made in free foreign exchange currency at the market rate of exchange prevailing on the date of the transference.

#### **Article 8. Expropriation and Compensation**

1. Neither Party shall take any measures to deprive, directly or indirectly, an investor of other Party of his investment, unless the following conditions are complied with:

- a. the measures are taken for a public purpose or in social interest, and in compliance with the laws;
- b. the measures are not discriminatory; and
- c. the measures are accompanied by provisions for timely, adequate and effective compensation, and in accordance with the respective constitutional laws.

2. Compensation shall be based on the market value of the affected investments at the date immediately before the date when the measure became publicly known. If such value is difficult to set, the compensation may be determined in

accordance with evaluation principles generally recognized as equitable.

3. The legality of the nationalization, expropriation or any other measure having equivalent effects and the amount of the compensation, can be claimed through ordinary judicial proceedings.

4. Investors of each Party whose investments have suffered losses owing to war or other armed conflict, a state of national emergency; civil disturbances, and other similar events in the territory of the other Party, shall receive from these a no less favourable treatment, than that accorded to national investors or investors from any third state, in regards to reparation, indemnification, compensation, or any settlement. Such payments shall be freely transferable.

## **Article 9. Subrogation**

1. When one Party, or any agency, institution, statutory body or corporation designated by it, has furnished an insurance contract or any other financial guarantee against non-commercial risks, relating any investment of one of the investors in the territory of the other Party, the latter shall recognize the rights of the first Party to subrogate in the rights of the investor, whenever a payment has been made by virtue of such contract or guarantee.

2. When one Party, or any agency, institution, statutory body or corporation designated by it, has paid its investor and by that virtue has acquired his rights and benefits, such investors may not claim such rights and benefits to the other Party, except by express authorizatoin of the first Party.

## **Article 10. Settlement of Disputes between One Party and an Investor of the other Party**

1. The disputes which arise within the scope of this Agreement between one Party and an investor of the other Party who has carried out investments in the territory of the first, or any agency, institution, statutory body or corporation in exercising subrogation rights under Article 8, shall if possible, be resolved through friendly consultations or negotiations.

2. The contending parties shall try in the first place, to resolve their dispute through consultations or negotiations.

3. If through such consultations or negotiations a solution is not reached within three months from the date of the petition for settlement, the investor may refer the dispute to:

a. the competent courts of the Party in whose territory the investment took place;

b. the International Center for the Settlement of Investment Disputes (ICSID), if the contending Party and the Party of the investor are Member States;

c. The Rules of Arbitration of the International Chamber of Commerce.

4. Once the investor has refereed the dispute to the competent court of the Party in whose territory the investment was made or to the Arbitral Tribunal, the choice between one or the other preceeding shall be final.

5. Arbitral awards shall be final and binding to the Parties to the dispute and shall be executed in accordance with the domestic laws of the Party in whose territory the investment would have taken place.

6. The Parties shall refrain from dealing, through diplomatic channels, with issues relating to disputes submitted to judicial proceedings or international arbitration, in accordance with the provisions of this Article, until the respective proceedings are concluded, except when the other Party has not carried out the judicial decision or the arbitral award, as established in the respective decision or award.

## **Article 11. Settlement of Disputes between the Parties**

1. Disputes arising between the Parties relating to the interpretation and application of the present Agreement shall be resolved, if possible, through friendly consultations or negotiations.

2. If an agreement is not reached within six months from the date of notification of the dispute, any Party may submit the dispute to the International Court of Arbitration of the International Chamber of Commerce (Court) in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be composed of three arbitrators and shall be appointed as follows: Within two months from the date of the arbitration request notification, each Party shall appoint an arbitrator. The two arbitrators shall together, within thirty days from the date the last arbitrator was appointed, appoint a third arbitrator, who shall be a national of a

third state and shall chair the Tribunal.

4. If, within the times established in paragraph 3 of this Article, the appointment of a third arbitrator has failed, any Party may invite the Court to make the appointment.

5. The Chairman of the Tribunal shall be a national of a third State with which both Parties maintain diplomatic relations.

6. The Arbitral Tribunal shall decide on the basis of the provisions of this Agreement, the principles of International Law on the subject matter, and the general principles of Law recognized by the Parties. The Tribunal shall reach its decision by a majority of votes and shall establish its own code of procedure.

7. Each Party shall pay for the expenses incurred by its respective arbitrator, as well as the expenses relating to its representation in the arbitral proceedings. The expenses incurred by the Chairman and other costs of the proceedings, shall be paid in equal shares by the Parties, except otherwise agreed.

8. Tribunal awards shall be final and binding to both Parties.

## **Article 12. Final Provisions**

1. This Agreement shall enter into force 30 days after the date on which both Parties shall have notified each other of the compliance with their respective constitutional requirements for entry into force of this Agreement. Either of the Parties may terminate the Agreement at any time by giving five years notice to the other through diplomatic channels.

2. In the event of expiration or termination, the provisions contained in Article 1-10 of the present Agreement, shall continue to apply for a period of ten years to the investments done before the official notification of the expiration or termination of the Agreement.

DONE in duplicate at Taipei this thirty day of August, 1996 in the Chinese, Spanish, and English languages, each text being equally authentic for each Party. In the event of any discrepancy between the different languages, the English text shall prevail.

John H. Chang

[Signed]

For the Government of the Republic of China

[Signed]

For the Government of the Republic of El Salvador