Agreement Between the Government of the People's Republic of China and the Government of the Republic of Madagascar for the Reciprocal Promotion and Protection of Investments

The Government of the People's Republic of China and the Government of the Republic of Madagascar (hereinafter referred to as “Contracting Parties”)

Desiring to intensify the economic relation, especially the investment made by the People's Republic of China in the Republic of Madagascar, and the investment made by the Republic of Madagascar in the People's Republic of China;

Recognizing that singing agreement of promotion and protection of such investments will be conducive to transfers of operational capital and technology in both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

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

(a) movable and immovable property as well as any property rights;

(b) shares, stock, capital and any other kind of participation in companies, and small participation or indirect participation in companies established in the territory of one Contracting Party ;

(c) claims to money , right related to properties or to any other performance having an economic value ;

(d) intellectual property, commercial property and industrial property; and

(e) concessions conferred by law or contract, including concessions to search for exploit or develop natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment, unless that such a change contravenes the laws and regulations of the Contracting Party in the territory of which the investment were made.

2. The term "investor" means:

(a) natural persons, possessing the nationality of the People's Republic of China or the Republic of Madagascar in accordance with respective laws of the People's Republic of China or the Republic of Madagascar;

(b) legal entityes, such as companies, partnerships or other organizations constituted under the law of the People's Republic of China or the Republic of Madagascar and having their head office in that Contracting Party;

Natural persons or legal entities mentioned in this Paragraph 1 and 2 of either Contracting Party shall invest in the one Contracting Party subject to laws and regulations of this Contracting Party.

3. The term “returns” means the net profit after taxation yielded by an investment , such as profits, dividends, royalties and any legitimate income in fixed period. Profits rising from investment and re-investment shall be equally protected.

4. The term “territory” means territory of either Contracting Party (including territorial sea), as well as any area beyond its territorial sea within which either Contracting Party has sovereign rights of explorations and exploitations of resources of the seabed and its subsoil and superjacent water resources in accordance with laws of either Contracting Party and international law.

Article 2. Promotion and Admission of Investments

Each Contracting Party shall endeavour to promote cooperation for the promotion and protection of investments made in its territory by investors of the other contracting party.

Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory so as to promote cooperation.

Article 3. Fair and Equitable Treatment

1. In accordance with principles of international law, each Contracting Party shall accord to investors of the other Contracting Party treatment with fair and equitable treatment, and the treatment shall not be impeded in laws or in fact.

2. Legal or de facto obstacles to the fair and equitable treatment mainly mean, but not limited to: non-equitable treatment of all kinds of restrictions on the means of production and management, non-equitable treatment of all kinds of restrictions on sale of products at home and abroad, as well as other measures with similar effect. But measures for reasons of security, public order, health, ethical and environmental protection and other reasons , these measures shall not be regarded as obstacles.

3. One Contracting Party shall conduct review as for entry, residence, working and communication application and other applications by natural persons investors of the other Contracting Party for the purpose of making investment in its territory.

Article 4. National Treatment and Most Favored Nation Treatment

1. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments, and activities associated with such investments by investors of the other Contracting Party treatment not less favorable than that accorded to the investment of its own investors or to investors of any third State, if the treatment is more favorable.

2. The most favored nation treatment mentioned in the Paragraph 1 of this Article shall not include the privileges granted by one Contracting Party to investors of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form regional economic organization.

3. The treatment accorded by one Contracting Party shall not include the privileges granted by one Contracting Party to investors of the any third State in accordance with agreement on avoiding double taxation or other taxation arrangement.

Article 5. Expropriation and Compensation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy the full and comprehensive protection and security.

2. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against the investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

(a) adopting measures for the public interests under good legal framework;

(b) without discrimination and not contrary to the commitments of the Contracting Parties;

(c) against fair compensation when adopting measures;

3. The compensation mentioned in Paragraph 2 of this Article shall be equivalent to value of the expropriated investments immediately before is taken becomes public knowledge. The interests shall be calculated from the date of the expropriation to the date of payment. The compensation shall be made without delay and be freely transferable.

Article 6. Compensation for Losses from Wars and Conflicts

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or terroristic activities in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords

to the investors of its own or any third State.

Article 7. Free Transfer

1. Investment made by investors of one Contracting Party in the other Contracting Party, the latter Contracting Party shall guarantee to an investor of the former Contracting Party that all payments related to an investment in its territory may be freely transferred.

The transfer shall be subject to laws and regulations of the Contracting Parties, and fulfill the procedure and obligation requirements by the laws and regulations provided in these laws and regulations. The transfers shall mainly include, but not be limited to:

(a) profits, dividends, interests and other incomes;

(b) royalties of non-material rights provided in Paragraph 1(d) and (e) of Article 1 of this Agreement;

proceeds of total or partial sale or liquidation of investments;

(c) payments made pursuant to legitimate loan agreement;

(d) sale of investment, proceeds of total or partial sale or liquidation of investments, including the value-added part of the investment;

(e) compensation paid under Article 4 and 5 of this agreement;

(f) earnings.

2. The transfers referred to in paragraph 1 of this Article shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable of the Contracting Party accepting the investment on the date of transfer.

3. Where there is no prevailing market exchange rate, the applicable exchange rate shall be the rate between the most recent rate between the relating currency and the special drawing right.

4. If there are special difficulties for international payment balance, the Contracting Parties may conduct temporary on the free transfers be in accordance with the standards and requirements provided in the International Monetary Fund Agreement, and shall be subject to fair, non-discriminatory, good faith standards.

Article 8. Subrogation

If a Contracting Party or its designated Agency makes payments to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its designated Agency and recognize the subrogation of the former Contracting Party or its designated Agency to such right or claim in the same scope, and shall assume obligations related to the investment.

Article 9. Specific Provision

If the provisions of domestic law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled after resort to negotiations as specified in Paragraph (1) of this Article, the dispute may be submitted at the request of the investor concerned to:

- arbitral tribunal within the territory of the Contracting Party; or

- judicial procedure of within the territory of the Contracting Party; or

- to the International Center for Settlement of Investment Disputes (ICSID), under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965; provided that the Contracting Party involved in the dispute may require the investor concerned to complete the domestic administrative review procedures specified be the laws and regulations of that Contracting Party before the submission to international arbitration.

3. The award shall be binding on both parties, and shall not be submitted to another suit or referred to any other settlement method not provided under the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

4. During the arbitration process or enforcement of arbitral awards, the Contracting Party related to the dispute shall not hold that the investor has received partial or total insurance compensation as defense.

Article 11. Application

1. This Agreement shall apply to investments made by one Contracting Party in the other Contracting Party subject to the laws and regulations of the latter Contracting Party prior to the entry into force of this Agreement.

2. However, it shall not apply to any investment dispute that may have arisen before its entry into force.

Article 12. Regulation of Dispute 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 with consultation through diplomatic channel.
2. If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case as follows:

(a) each Party to the dispute shall appoint an arbitrator;

(b) these two arbitrators shall jointly select a national of a third State as the Chairman;

(c) all arbitrators shall be appointed within two months that one Contracting Party notice the other Contracting Party to submit the dispute for arbitrateion.

4. If the periods specified in paragraph 3 (c) of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-president f the International court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by virtue of the present Agreement and pursuant to the generally recognized principles of international law.

6. The tribunal shall reach its decision by a majority of votes; the decision shall be final and binding on both Contracting Parties. The tribunal shall, upon the request of either Contracting Party, explain reasons for its award. Unless the arbitral tribunal makes different decisions under special circumstances, the legal fees including the fees of the arbitrators shall be borne in equal parts by the Contracting Parties to the dispute.

Article 13. Entry Into Force and Duration

The Contracting Parties shall notify each other by mutual written notice of the fulfillment of its internal legal procedures required. This Agreement shall come into effect on the first day of the following month after the date on which receiving the latter notice.

This Agreement shall enter into force on the 30th day after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures thereof have been fulfilled.

This Agreement shall remain in force for a period of ten (10) years and thereafter shall be in force for an indefinite period of time, unless either of the Contracting Parties delivers through diplomatic channels to the other Contracting Party a written

notice of its decision to terminate this Agreement, with one year in advance.

With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the duly authorized representatives of their respective Governments, have signed this Agreement.Done at Antananarivo on November 2005 in two original versions, in the Chinese and French languages, both texts being equally authentic.

For the Government of the People's Republic of China

For the Government of the Republic of Madagascar