

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA FOR PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of China and the Government of the Federal Republic of Nigeria (hereinafter referred to as The Contracting Parties),

Desiring to create favorable conditions for greater investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individuals business initiative, will contribute to development and will increase prosperity in both Contracting Parties;

Recognizing that each Contracting Party has the right to define the conditions of foreign investment received, the investor should respect the host countrys sovereignty and laws;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement;

(1) "Investment" means every kind of asset and in particular, though not exclusively, includes:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares, stock and debentures of a company or interests in the property of company;

(c) claims to money or to any performance under contract having a financial value;

(d) intellectual property rights, technical processes, know-how and goodwill;

(e) business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term investment includes all investments, whether made before or after the date of entry into force of this Agreement; the alteration of the asset shall not be contrary to the initial approval granted to the investment by the Contracting Party in whose territory the investment is made;

(2) "Returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interests, capital gains, dividends, royalties and fees;

(3) "Nationals" means, with regard to either Contracting Party, natural persons having the nationality of that Contracting Party;

(4) "Companies" means, with regard to either Contracting Party, corporations, firms associations and other legal persons incorporated or constituted under the law in force in any part of each Contracting Party;

(5) "Territory" includes all areas (i) in respect of the Federal Republic of Nigeria, as defined by the Constitution of the Federal Republic of Nigeria; (ii) in respect of the Republic of China, over which the Republic of China has exercised its sovereignty or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall grant all possible facilities available to encourage and create favorable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and subject to its right to exercise powers conferred by its laws, shall admit such capital. This Agreement shall, to the extent that a written approval is required for an investment, only extend to investments, whether made before or after the coming into force of this Agreement, which is specifically approved in writing by the Contracting Party in whose territory the investment has been made or is subject to the laws in force in the territory of the Contracting Party concerned and to the conditions, if any, upon which such approval shall have been granted.

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures, the management, maintenance use, enjoyment or disposal of investment in its territory of nationals, or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investment or returns of nationals or companies of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance use, enjoyment or disposal of their investment, to treatment less favorable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

Article 4. Compensation for Losses

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third state.

(2) Without prejudice to paragraph (1) or this (2) Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from: (i) requisitioning of their property by its forces or authorities, or (ii) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investment of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal policies of the party on a non-discriminatory bases and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at the prevalent commercial rate until the date of payment, shall be made without delay, and shall be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation to prompt review, by a judicial or other independent authority of the Contracting Party making the expropriation, of his or its case and of the valuation of his or its investment in accordance with principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) or this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investments to such nationals or companies of the other Contracting Party who are owner of those shares.

Article 6. Repatriation of Investments and Returns

(1) Both Contracting Parties shall seek and obtain, in accordance with their respective laws and regulations, the approval of their respective authorities to the effect that investors of either Contracting Party shall have the right of free transfer of their capital and returns.

(2) Transfers of currency shall be effected without delay in the convertible currency agreed by the national or company making the investment. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Settlement of Investment Disputes

Each Contracting Party hereby consents to submit any dispute or difference that may arise out of or in relation to investments made in its territory by a national or company of the other Contracting Party for settlement through arbitration in the International Chamber of Commerce. For the arbitration procedure, the rules of arbitration 1988 of the International Chamber of Commerce shall be applied.

Article 8. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled amicably.

(2) If a dispute between the Contracting Parties cannot be settled, 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 in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who upon approval by the two Contracting Parties shall be appointed chairman of the tribunal. The chairman shall be appointed within two months from the date of appointment of the other two members.

(4) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by the Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

(5) The arbitral tribunal shall render its award by a majority of votes. Such award shall be binding on both Contracting Parties.

Article 9. Subrogation

(1) If one Contracting Party or its designated agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the party indemnified.

(2) The former Contracting Party or its designated agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investments concerned and their related returns.

(3) Any payments received by the former Contracting Party or its designated agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 10. Amendment or Revision

Any amendment to or revision of this Agreement shall be in writing and shall come into effect when it is confirmed by both Contracting Parties in writing.

Article 11. Entry Into Force

This Agreement shall enter into force on signature.

Article 12. Duration and Termination

This Agreement shall remain in force for an initial period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made at any time before the termination of the Agreement, its provisions shall continue, in effect with respect to such investments for a period of fifteen years from the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorized thereto by their respective Government, have signed this Agreement.

Done in duplicate, in the Chinese and English languages, both texts being equally authentic, at Taipei on the seventh day of the fourth month of the eighty-three year of the Republic of China, corresponding to the seventh day of April of the year one thousand nine hundred and ninety-four.

For the Government of the Republic of China

[Signed]

P.K. Chiang

Minister of Economic Affairs

For the Government of the Federal Republic of Nigeria

[Signed]

Chief Melford Okilo

Minister of Commerce and Tourism