

AGREEMENT BETWEEN

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the People's Republic of China and the Government of The United Republic of Tanzania (hereinafter referred to as the Contracting Parties),

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

Recognizing that the reciprocal encouragement, promotion and protection of such investment on the basis of equality and mutual benefit will be conducive to stimulating the business initiative of the investors and will increase economic prosperity in both States;

Respecting the economic sovereignty of both States;

Encouraging investors to respect corporate social responsibilities; and

Desiring to intensify the cooperation between both States, to promote healthy, stable and sustainable economic development, and to improve the standard of living of nationals;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1 The term "investment" means any kind of asset that has the characteristics of an investment, invested by an investor of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, including but not limited to:

a Movable and immovable property and other property rights such as mortgages, pledges and similar rights;

b Shares, debentures, stock and any other kind of equity participation in companies;

c Claims to money or to any other performance having an economic value associated with an investment;

d Intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, technical processes, know-how and goodwill;

e Business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources;

f Bonds, including government issued bonds, debentures, loans and other forms of debt, and rights derived therefrom;

g Rights under contracts, including turnkey, construction, management, production, or revenue sharing contracts.

An investment has the following characteristics: the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

Any change in the form in which assets are invested does not affect their character as investments provided that such change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

An investment made by an investor of one Contracting Party through an enterprise which is wholly or partially owned by the investor and having its seat in the territory of the other Contracting Party is also deemed as an investment for the purposes of this paragraph.

For the avoidance of doubt, claims to money in Paragraph 1(c) of this Article does not include (a) claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of the other Contracting Party; or (b) claims to money that arise from marriage or inheritance and that have no characteristics of an investment.

Bonds, debentures and loans with an original maturity of less than 3 years shall not be deemed as investments under this Agreement.

2 The term "investor" means a national or an enterprise of one Contracting Party who is investing or has invested in the territory of the other Contracting Party:

a The term "national" means a natural person who has nationality of either Contracting Party in accordance with the applicable laws of that Contracting Party;

b The term "enterprise" means any entity, including companies, firms, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of either Contracting Party and that have their seat and substantial business activities in that Contracting Party, irrespective of whether it is owned or controlled by a private person or the government.

c Legal entities constituted under the laws of a non-Contracting Party but directly owned or controlled by a national in Paragraph (a) or an enterprise in Paragraph (b).

3 The term "return" means the income yielded from investments, including profits, dividends, interest, capital gains, royalties, payments in kind and other legitimate income related to investments.

4 The term "territory" means,

a In respect of the People's Republic of China, the territory, including the land area, internal waters, the territorial waters and air space, as well as any area beyond its territorial waters over which the People's Republic of China has sovereign rights or jurisdiction for the exploration and exploitation of resources of the seabed and its subsoil and the superjacent water resources, in accordance with Chinese law and international law.

b In respect of the United Republic of Tanzania, the territory which constitutes the United Republic of Tanzania including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and Continental Shelf over which the United Republic of Tanzania has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force as well as the 1982 United Nations Convention on the Law of the Sea and International law.

Article 2. Promotion and Protection of Investment

1 Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and shall accept and protect such investments in accordance with its laws and regulations.

2 Subject to its laws and regulations, one Contracting Party shall provide assistance and facilities for obtaining visas and working permits for nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

Article 3. National Treatment

1 Without prejudice to its applicable laws and regulations, with respect to the operation, management, maintenance, use, enjoyment, sale or disposition of the investments in its territory, each Contracting Party shall accord to investors of the other Contracting Party and their associated investments treatment no less favourable than that accorded to its own investors and associated investments in like circumstances.

2 Each Contracting Party, in accordance with its laws and regulations, may grant incentives or preferences to its nationals for the purpose of developing and stimulating local entrepreneurship provided that such measures shall not significantly affect

the investments and activities of the investors of the other Contracting Party.

Article 4. Most Favoured Nation Treatment

1 Each Contracting Party shall accord to investors of the other Contracting Party and the investments thereof treatment no less favourable than that it accords, in like circumstances, to investors and the investments thereof of any third State with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, sale or disposition of investments.

2 The provisions of Paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

a Any free trade area, customs union, economic union, monetary union or any agreement resulting in such unions, or similar institutions;

b Any international agreement or arrangement relating to taxation;

c Any arrangements for facilitating small scale frontier trade in border areas.

3 Paragraph 1 of this Article does not apply in respect of dispute settlement provisions laid down by this Agreement and by other similar international agreement to which one of the Contracting Parties is signatory.

Article 5. Fair and Equitable Treatment

1 Each Contracting Party shall ensure that it accords to investors of the other Contracting Party and associated investments in its territory fair and equitable treatment and full protection and security.

2 "Fair and equitable treatment" means that investors of one Contracting Party shall not be denied fair judicial proceedings by the other Contracting Party or be treated with obvious discriminatory or arbitrary measures.

3 "Full protection and security" requires that Contracting Parties take reasonable and necessary police measures when performing the duty of ensuring investment protection and security. However, it does not mean, under any circumstances, that investors shall be accorded treatment more favourable than nationals of the Contracting Party in whose territory the investment has been made.

4 A determination that there has been a breach of another article of this Agreement, or an article of another agreement, does not constitute a breach of this article.

Article 6. Expropriation

1 Neither Contracting Party shall expropriate, nationalize or take any other measure, the effects of which would be equivalent to expropriation or nationalization against the investments of the investors of the other Contracting Party in its territory (hereinafter referred to as expropriation), unless the expropriation meets all of the following conditions:

a It was in the public interest;

b It was in accordance with domestic legal procedure and relevant due process;

c It was non-discriminatory;

d Compensation was given.

"Other measures, the effects of which would be equivalent to expropriation or nationalization" means indirect expropriation.

2 The determination of whether a measure or a series of measures of one Contracting Party constitutes indirect expropriation in Paragraph 1 requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:

a The economic effect of a measure or a series of measures, although the fact that a measure or a series of measures of the Contracting Party has an adverse effect on the economic value of investments does not in itself establish that indirect expropriation occurred;

b The extent to which the measure or the series of measures discriminates, in scope or application, against investors and associated investments of the other Contracting Party;

c The extent to which the measure or the series of measures interferes with the clear and reasonable investment expectations of investors of the other Contracting Party; where such expectations arise from specific commitments made by one Contracting Party to the investors of the other Contracting Party;

d The character and purpose of a measure or a series of measures, whether the measure or series of measures was adopted in the public interest and in good faith, and whether the expropriation was proportionate to its purpose.

3 Except in rare circumstances, such as where the measures adopted substantially exceed the measures necessary for maintaining reasonable public welfare, legitimate regulatory measures adopted by one Contracting Party for the purpose of protecting public health, safety and the environment, and that are for the public welfare and are non-discriminatory, do not constitute indirect expropriation.

4 The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation is taken or when the impending expropriation becomes public knowledge, whichever is earlier. The compensation shall also include interest at a reasonable commercial rate until the date of payment. The compensation shall be made without unreasonable delay, be effectively realizable and freely transferable.

Article 7. Compensation for Damages and Losses

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

2 Investments by investors of one Contracting Party that, in any of the situations referred to in Paragraph 1 of this Article, suffer losses in the territory of the other Contracting Party resulting from the requisition or destruction of an investment or a part thereof by the latter's armed forces or authorities, which was not due to combat action or required by the necessity of the situation, shall be accorded restitution or reasonable compensation.

Article 8. Transfers

1 Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party upon fulfillment of tax obligations in relation to the investment a free transfer of their returns or proceeds legitimately obtained in the former Contracting Party's territory, including but not limited to:

- a Profits, interest, dividends, capital gains, royalty fees, and other fees in connection with intellectual property rights;
- b Payments in connection with an investment contract, including related payments made pursuant to a loan agreement;
- c Proceeds obtained from the whole or partial sale or liquidation of investments;
- d Earnings and remuneration of nationals of the other Contracting Party who work in connection with an investment;
- e Payments made pursuant to Article 6 and Article 7; or
- f Payments arising out of a dispute in connection with investments.

2 Except as otherwise provided for in this Agreement, each Contracting Party shall ensure that the transfers mentioned above shall be made without any delay in a freely convertible currency specified by International Monetary Fund and at the market rate of exchange applicable on the date of transfer to the currency to be transferred.

3 Notwithstanding the provisions of Paragraph 1 and 2 of this Article, a Contracting Party may prevent a transfer through the fair, equitable, non-discriminatory and good faith application of its national laws relating to:

- a Bankruptcy, insolvency or the protection of the rights of creditors;
- b Issuing, trading or dealing in securities, futures, options and other derivatives;
- c Suspected criminal or administrative offenses;
- d Reporting of transfers of cash or other monetary instruments; or
- e Ensuring compliance with judicial or administrative proceedings.

4 In case of a serious balance of payments difficulty or of a threat thereof, each Contracting Party may temporarily restrict transfers, provided that such a Contracting Party implements measures in accordance with international standards. These restrictions should be imposed on an equitable, non-discriminatory and good faith basis.

Article 9. Subrogation

If one Contracting Party or its designated agency makes a payment to an investor under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment of that investor made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a The assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by that investor to the former Contracting Party or to its designated agency, as well as,
- b That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

Article 10. Health, Safety and Environmental Measures

1 The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Contracting Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor.

2 Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining environmental measures necessary to protect human, animal or plant life or health.

Article 11. Denial of Benefits

1 A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor where the enterprise of such other Contracting Party is owned or controlled by a national or enterprise of a non-Party, in any of the following situations:

- a The denying Contracting Party does not maintain diplomatic relations with the non-Party; or
- b The denying Contracting Party 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; or
- c The enterprise has no substantial commercial business in the territory of the other Contracting Party.

2 A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of such other Contracting Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Contracting Party and nationals or enterprises of the denying Contracting Party own or control the enterprise.

Article 12. Settlement of Disputes between Contracting Parties

1 Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2 If a dispute cannot thus be amicably settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3 Such tribunal shall comprise of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. The two arbitrators shall, within a further period of two months from when both of them were appointed, jointly select as the presiding arbitrator of the arbitral tribunal a national of a third State having diplomatic relations with both Contracting Parties.

4 If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is

otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5 The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6 The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons for its award.

7 Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in the arbitral proceedings. The relevant costs of the presiding arbitrator and tribunal shall be borne in equal parts by the Contracting Parties.

Article 13. Settlement of Disputes between Investors and One Contracting Party

1 Any legal dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute, including conciliation procedures.

2 If a dispute in which an investor of one Contracting Party claims that the other Contracting Party has breached an obligation under Article 2 through 9, or Paragraph 2 of Article 14, cannot be settled through negotiations within six months from the date negotiations were initiated by either party to the dispute, the disputing investor who incurred loss or damage from that breach may, at his option, submit the claim:

a To the competent court of the State where the investment has been made;

b To the International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965, for arbitration, provided that both Contracting Parties are parties to the ICSID Convention;

c To an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on the International Trade Law (UNCITRAL); or

d To any other arbitration institution or ad-hoc arbitral tribunal agreed to by the disputing parties.

The other Contracting Party has the right to require the investor concerned to exhaust the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before submitting to international arbitration.

3 If the investor has submitted the dispute to the competent court of the Contracting Party concerned or to international arbitration, the choice of one of the four abovementioned procedures shall be final.

4 A dispute shall not be submitted to arbitration when more than three (3) years have elapsed from the date that the investor first acquired or should have first acquired knowledge of the events which gave rise to the dispute.

5 If the stipulations in this Agreement are in conflict with applicable arbitration rules, the stipulations in this Agreement shall prevail.

6 When a claim is related to breach of Article 2 to Article 9, the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. When a claim is related to breach of Paragraph 2 of Article 14, the tribunal shall apply:

a The rules of law as may be agreed by the disputing parties; or

b If the rules of law have not been agreed:

i The law of the Contracting Party where the investment has been made, including its rules on the conflict of laws; and

ii Such rules of international law as may be applicable.

7 Unless the disputing parties agree otherwise, where an award affirms that a Contracting Party has breached its obligations under this Agreement, the tribunal may only award, separately or in combination:

a Monetary damages and any applicable interest;

b Restitution of property, in which case the award may specify monetary damages and corresponding interest in lieu of restitution.

8 The arbitration award shall be final and binding upon both parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

9 A disputing party may not seek enforcement of a final award until:

a In the case of a final award made under the ICSID Convention:

i One hundred and twenty (120) days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

ii Revision or annulment proceedings have been completed; and

b In the case of a final award under the UNCITRAL Arbitration Rules, or any other arbitration rules selected by both disputing parties:

i Ninety (90) days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

ii A court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal by any disputing party.

10 In principle, each disputing party shall bear the costs of its appointed arbitrator and of any legal representation in proceedings. The costs of the presiding arbitrator and of other expenses associated with the conduct of the arbitration shall be borne equally by the disputing parties. The tribunal may determine that one disputing party shall bear a higher proportion of the costs, providing an explanation for this decision. If the tribunal deems that the claim or the objection of one disputing party is frivolous, it may determine with reasonable cause that the losing party shall bear the reasonable costs and attorney's fees of the prevailing party incurred in objecting or opposing the objection.

Article 14. Other Obligations

1 If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected by this Agreement.

2 Each Contracting Party shall observe any written commitments in the form of agreement or contract it may have entered into with the investors of the other Contracting Party with regard to their investments.

Article 15. Application

1 This Agreement shall apply to investments made prior to or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party concerned, but shall not apply to any dispute arising before its entry into force.

2 This Agreement shall apply to the investor stipulated in Paragraph 2 (c), Article 1 only under the following circumstances: when the investment of such investor is expropriated by the other Contracting Party, the investor has no right to claim compensation or the investor waives his right to claim compensation under other agreements signed by the non-Contracting Party, under whose laws and regulations the investor was established, and the other Contracting Party.

Article 16. Consultations

1 The representatives of the Contracting Parties shall hold meetings from time to time for the purpose of:

a Reviewing the implementation of this Agreement;

b Exchanging legal information and investment opportunities;

c Resolving disputes arising out of investments;

d Forwarding proposals on promotion of investment;

e Studying other issues in connection with investment.

2 If a Contracting Party considers that the other Contracting Party has offered an encouragement under paragraph 1 of Article 10, it may request consultations with the other Contracting Party.

3 When either Contracting Party requests consultation on any matter of Paragraph 1 and 2 of this Article, the other Contracting Party shall provide a prompt response and the consultation shall be held in Beijing or Dar-es-Salaam alternately.

Article 17. Interpretation

1 In the dispute settlement procedure stipulated in Article 13, upon the request of the Contracting Party to the dispute, the arbitral tribunal shall require both Contracting Parties to interpret articles of this Agreement in relation to the dispute. The Contracting Parties shall submit in writing a combined decision of the interpretation to the arbitral tribunal within sixty days after the request was raised.

2 The combined decision made by both Contracting Parties pursuant to Paragraph 1 shall be binding upon the arbitral tribunal. The award shall be consistent with the combined decision. If both Contracting Parties fail to make such decision within sixty days, the arbitral tribunal will make a decision independently.

Article 18. Entry Into Force, Duration and Termination

1 The Contracting Parties shall notify each other in writing through diplomatic channels of the fulfillment of their domestic legal procedures in relation to the approval 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. This Agreement shall remain in force for a period of ten (10) years, and shall continue to be in force thereafter unless terminated in accordance with Paragraph 2 of this Article.

2 Each Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving one year's advance written notice to the other Contracting Party.

3 With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 17 shall continue to be effective for a further period of ten years from such date of termination.

4 This Agreement may be amended with the agreement of the Contracting Parties. Any amendment shall enter into force according to the procedures required for entry into force of the present Agreement.

IN WITNESS WHEREOF the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Dar-es-Salaam on March 24, 2013, in the Chinese and English languages, the two texts being equally authentic.

For the Government of For the Government of

The People's Republic of China The United Republic of Tanzania

Gao Hucheng William A. Mgimwa