Agreement Between the Government of the People's Republic of China and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam Concerning the Encouragement and Reciprocal Protection of Investment

The Government of the People's Republic of China and the Government of His Majesty the Sultan and Yang Di-pertuan of Brunei Darussalam (hereinafter referred to as the Contracting Parties),

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

Recognising that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Recognising the importance of the transfer of technology and human resources development arising from such investments;

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

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(a) 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 particular, though not exclusively, includes:

(i) Movable, immovable property and other property rights such as mortgages, liens or pledges;

(ii) Shares in, stock and debentures of a company and any other form of participation in a company, and securities issued by Contracting Party;

(iii) Claims to money or to any other performance under contract associated with any investment having a financial value;

(iv) Industrial and intellectual property rights, and in particular copyrights, patents, registered designs, trademarks, tradenames, trade and business secrets, technical processes, know-how and goodwill;

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

Any alteration to the form in which the assets are invested shall not affect their classification as investments.

(b) The term "territory" means the territory of either Contracting Party and the maritime areas adjacent to the coast of either Contracting Party to the extent to which either Contracting Party may exercise sovereign rights or jurisdiction in those areas according to international law.

2. The term "investors" shall mean nationals and companies.

(a) The term "nationals" shall mean

(i) In respect of Brunei Darussalam;

Natural persons who are afforded the status of national of Brunei Darussalam, under its applicable laws;

(ii) In respect of the People's Republic of China;

Natural persons who have nationality of the People's Republic of China in accordance with its laws;

(b) The term "companies" shall mean any kind of entities, including any partnership, corporation, proprietorship, firm, association or other organization with or without legal personality, that is duly incorporated, constituted or otherwise organised.

(i) Under the laws of either Contracting Party having its effective seat of management within that Contracting Party where the incorporation took place, or

(ii) Under the laws of a third country and being companies in which nationals or companies of either Contracting Party within the meaning of sub-paragraph (i) of this paragraph have a substantial or controlling interest;sub-paragraph (i) of this paragraph have a substantial or controlling interest;

Irrespective of whether or not their activities are directed to profit, organised with limited or unlimited liability.

The Sub-paragraph (ii) of this Paragraph can be applied only when the said third country abandons or fails to exercise its right to protect the said companies.

3. The term "returns" shall mean the amounts legally yielded by an investment and in particular, though not exclusively, shall include profit, financial gains, interests, capital gains, dividends, royalties and fees.

Article 2. Promotion of Investments

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

2. Each Contracting Party shall within the framework of their national legislation give sympathetic consideration to applications for the entry and continued presence of persons of either Contracting Party who wish to enter into the territory of the other Contracting Party in connection with an investment. Applications for work permits shall also be given sympathetic consideration.

Article 3. Protection and Treatment of Investments

1. Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment in the territory of the other Contracting Party.

2. Investments by investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investments in its territory of investors of the other Contracting Party. Returns from the its territory of investors of the other contracting party. Returns from the investment and, in the event of re-investment, the returns therefrom shall enjoy the same protection as the investment.

3. The treatment and protection as mentioned in Paragraphs 1 and 2 of this Article shall not be less favourable than that accorded to investments and activities associated with such investments of investors of a third State.

4. The treatment and protection as mentioned in Paragraphs 1, 2 and 3 of this Article shall not include any preferential treatment given to investors of a third State under any existing or future customs union, free trade zone, economic union, any agreement or future customs union, free trade zone, economic union, any agreement or arrangement for the avoidance of double taxation, and any agreement for facilitating frontier trade.

Article 4. Expropriation

1. Investments of investors of either Contracting Party shall not either directly or indirectly be expropriated or nationalised or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter together referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose of that Contracting Party on a non-discriminatory basis and against appropriate compensation or compensations.

2. The compensation referred to in Paragraph 1 shall be equivalent to the genuine value of the expropriated investment immediately before the expropriated action was taken or became publicly known, whichever is the earlier, and shall include interest at the then current commercial lending rate until the date of payment. Compensation shall be paid without delay, be effectively realisable and freely transferable. An investor of either Contracting Party that asserts that all or part of its investment has been expropriated shall have a right under the law of the Contracting Party making the expropriation to prompt review by the appropriate judicial or independent administrative authorities to determine whether such expropriation and the valuation of his or its investment conforms with the principles set out in this paragraph.

3. Each Contracting Party shall in accordance with its laws and regulations ensure that, in cases of expropriation of investments of a company which is incorporated or constituted under the law in force in any part of its own territory and in which an investor of the other Contracting Party has an investment, either (i) that company to be compensated in accordance with the provisions or Paragraphs 1 and 2 above or (ii) the investor of the other Contracting Party to be compensated directly in accordance with provisions of Paragraphs 1 and 2 above: provided however that in no event shall this Paragraph be construed as to require a Contracting Party to provide for both (i) and (ii) above.

Article 5. Compensation for Damage or Loss

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment no less favourable than that which the latter accords to nationals or companies of any third country as regards restitution, compensation or any other valuable consideration.

2. Without prejudice to Paragraph 1 of this Article, investors of one Contracting Party who in any of the situations referred to in that Paragraph suffer damages or losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities;

(b) Destruction of their property by its forces or authorities which was not caused in combat or was not required by the necessity of the situation;

Shall be accorded restitution or fair and adequate compensation.

3. Payments resulting under this Article shall be made in convertible currency, freely transferable and shall be repatriated in accordance with Article 6.

Article 6. Repatriation

1. Each contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the transfer of their investments and returns held in the territory of the former Contracting Party, including:

(a) Profits, dividends, interests and other legitimate income;

(b) Amounts accruing from the total or partial sales or liquidation of the initial and additional capital investments;

(c) Payment made pursuant to a loan agreement in connection with investment;

(d) Royalties mentioned in Paragraph 3 of Article 1;

(e) Payments of technical assistance or technical service fee, management fee;

(f) Payments in connection with projects on contract;

(g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party;

(h) Payments of compensation provided for in Article 4 and 5.

2. Transfers of currency shall be made without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the relevant investors of one Contracting Party and the other Contracting Party. Transfers shall be made at the market rate of exchange of the Contracting Party accepting the investment on the date of transfer. In the event that the market rate of exchange does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

Article 7. Subrogation

If either Contracting Party makes a payment to any of its investors under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party and if an investment in the territory of one Contracting Party is insured against non-commercial risks under a system established by law and a payment is made by an insurer under an indemnity given in respect of that investment the Contracting Party in whose territory the investment was made shall, without prejudice to the rights of the former Contracting Party under Article 8, recognise the assignment to the former Contracting Party or the insurer as appropriate, whether under a law or pursuant to a legal transaction, of any right or claim of such national or company of the former Contracting Party. The latter Contracting Party shall also recognise the subrogation of the former Contracting Party or insurer to any such right or claim (assigned claims) which that Contracting Pary or insurer shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments made by virtue of such assigned claims, Article 5 and 6 shall apply mutatis mutandis.

Article 8. 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 and negotiations through diplomatic channel.

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

3. Such ad hoc arbitral tribunal shall comprise of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, within four months from such date, agree upon a national of a third state which has diplomatic relations with both Contracting Parties as their Chairman.

4. If the aarbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointment(s). If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

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

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

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties. The arbitral tribunal shall be free to make an alternative provision concerning costs.

8. The arbitral tribunal shall hold meetings in a neutral state to be mutually agreed by both Contracting Parties.

Article 9. Settlement of Investment Disputes

1. Disputes concerning investments between a Contracting Party and an investor of the other Contracting Party shall, as far as Possible, be settled amicably through negotiations between the parties in dispute.

2. If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in the dispute, the Contracting Parties in the dispute hereby agree the dispute to be submitted to arbitration provided that the Contracting Party in the dispute may require the domestic administrative reconsideration procedure be exhausted. The provisions of this paragraph shall not apply if the dispute is referred to the local court of law and such reference shall be with the consent of both parties in the dispute.

3. Such arbitral tribunal shall be constituted for each individual case as follows: each party to the dispute shall appoint one arbitrator, and these two arbitrators shall agree upon a national of a third State which has diplomatic relation with both Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months from the date on which either party to the dispute receives the written notice requesting from arbitration from the other party to the dispute, and the Chairman shall be appointed within four months from such date. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the President of the International Court of Arbitration of the

International Chamber of Commerce in Paris to make the necessary appointments.

4. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

5. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

6. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognised principles of international law accepted by both Contracting Parties.

7. Each party to the dispute shall bear the cost of its appointed arbitrator and of its representation in the arbitral proceedings. The relevant cost of the appointed Chairman and the tribunal shall be borne in equal parts by the parties to the dispute. The arbitral tribunal shall be free to make an alternative provision concerning costs.

8. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or parts of its loss.

9. The arbitral tribunal shall hold meetings in a neutral state to be mutually agreed between the parties to the dispute.

10. Subject to Paragraph 2 of this Article, and in the event of both Contracting Parties having become Contracting States of the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18th March 1965, the dispute shall be submitted for arbitration under the aforementioned Convention unless the parties in dispute agree otherwise. Each Contracting Party hereby declares its acceptance of such procedure.

Article 10. Other Obligations

1. If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

2. Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11. Scope of Application

This Agreement shall apply to investments which are made prior to and after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Consultation

1. The representatives of the two Contracting Parties shall hold meeting from time to time for the purpose of:

(a) Reviewing the implementation of this Agreement;

(b) Exchanging legal information and investment opportunities;

(c) Resolving dispute arising out of investments;

(d) Forwarding proposals on promotion of investment and;

(e) Studying other issues in connection with investments.

2. Where either Contracting Party requests consultation on any matters of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in the People's Republic of China and Brunei Darussalam.Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in the People's Republic of China and Brunei Darussalam.

Article 13. Temporary Measures

Without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law, the provisions of this Agreement shall remain in force notwithstanding a conflict arising between the Contracting Parties. The measures referred to above shall be repealed no late than the date of the actual termination of the conflict between the Contracting Parties, irrespective of whether or not diplomatic relations have been reestablished between them.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in Paragraph 1 of this Article.Paragraph 1 of this Article.

3. After the expiration of the initial ten years period, either Contracting Party may, at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 13 shall continue to be effective for a further period of ten years from such date of termination of this Agreement.Articles 1 to 13 shall continue to be effective for a further period of ten years from such date of termination of this Agreement.

5. The Protocol annexed hereto shall form an integral part of this Agreement.

N WITNESS WHEREOF, the duly authorised representatives of their respective Governments have signed this Agreement.

Done in duplicate at Bandar Seri Begawan on 17th of November 2000 in the Chinese, Malay and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

On signing the Agreement between the Government of the People's Republic of China and the Government of His Majesty the Sultan and Yang Di-Pertuan of Bru nei Darussalam concerning the encouragement and reciprocal protection of inv estments, the und ersigned representatives of each of the Contracting Party have, in addition, agreed upon th e following provisions which shall from an integral part of the Agreement:

1. Additional Article 3 – Protection and Treatment

(a) For the purposes of Articles 3 (Protection and Treatment) and 5 (Compensation for Damage and Loss), any action restricting the purchase of raw or auxiliary materials or of energy or fuel or means of production or operation of any kind, or impeding the marketing of products inside or outside the country, as well as any other measures having similar effect shall be deemed to be "treatment less favourable." Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed to be "treatment less favourable" within the meaning of the abovementioned Articles.

(b) The provisions of Article 3 (Protection and Treatment) do not oblige a Contracting Party to extend to investors of the other Contracting Party, tax privileges, tax exemptions and tax reduction which according to its tax law are granted only to its own investors.

2. Additional Article 6 – Repatriation

A transfer shall be deemed to have been made "without delay" within the meaning of Article 6(2) if effected within such period as normally required for the comple tion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed four months.