# Agreement between the Government of the People's Republic of China and the Government of the Democratic Republic of the Congo on the Encouragement and Mutual Protection of Investments

The Government of the People's Republic of China and the Government of the Democratic Republic of the Congo (hereinafter "the Contracting Parties"),

Aiming to create favorable conditions for investors of one Contracting Party to invest in the territory of the other Contracting Party,

Recognizing that mutual encouragement, promotion and protection of such investments will contribute to the promotion of investor's initiatives and the prosperity of the two countries,

Willing to strengthen economic cooperation between the two countries on the basis of equality and mutual benefit,

Have agreed as follows:

## Article 1.

For this Agreement:

1. "Investment" means all kinds of assets invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, including, inter alia, but not limited to, the following

(a) movable and immovable property and other property rights, including mortgages and pledges;

(b) shares, stocks and any other form of participation in a company;

(c) pecuniary claims and other conduct claims with economic value;

(d) copyrights, industrial property rights, proprietary technologies and processes;

(e) concessions obtained in accordance with the law, including concessions for exploration and exploitation of natural resources.

2. "Investor" shall mean

(a) a natural person having the nationality of any Contracting Party in accordance with the laws of that Contracting Party;

(b) Legal entities, including companies, firms, commercial organizations and other organizations, established or incorporated in accordance with the laws and regulations of any Contracting Party and domiciled in the territory of that Contracting Party.

3. "Proceeds" means sums derived from investments, including profits, dividends, interest, commission fees and other lawful income.

## Article 2.

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

2. One Contracting Party shall assist and facilitate the obtaining of visas and work permits for nationals of the other Contracting Party who are engaged in investment-related activities in its territory.

## Article 3.

1. Investors of one Contracting Party shall be treated fairly and equitably and protected in their investments and investment-related activities in the territory of the other Contracting Party.

2. The treatment and protection referred to in paragraph 1 of this Article shall not be less favourable than those accorded by the other Contracting Party to the investments and investment-related activities of investors from any third country.

3. The treatment and protection referred to in paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments and investment-related activities of investors from third countries in accordance with customs unions, free trade zones, economic unions, double taxation avoidance agreements or for the purpose of facilitating border trade.

## Article 4.

1. A Contracting Party shall not adopt expropriation, nationalization or other similar measures (hereinafter collectively referred to as expropriation) with respect to investments made by investors of the other Contracting Party in its territory, unless the following conditions are met.

(a) in the public interest.

(b) in accordance with domestic legal procedures

(c) The measures taken are non-discriminatory

(d) compensation is given.

2. The compensation referred to in paragraph 1 (d) of this Article shall be equal to the market value of the expropriated investment at the time the expropriation is announced, paid in convertible currency and freely transferable. The payment of compensation shall not be delayed.

## Article 5.

When an investor of one Contracting Party suffers loss of investment in the territory of the other Contracting Party as a result of war, state of emergency, riots, disturbances or other similar events in the territory of the other Contracting Party, it shall not treat the investor of one Contracting Party less favourably than it would treat the investor of any third country if the other Contracting Party takes measures in this regard.

## Article 6.

1. A Contracting Party shall, in accordance with its laws and regulations, guarantee the transfer of investments and earnings in its territory by investors of the other Contracting Party, including

(a) profits, dividends, interest, and other lawful income.

(b) all or part of the liquidation payments of the investment

(c) repayment of loan agreements related to the investment; and

(d) the royalties of Article 1(1)(d) of this Agreement.

(e) payments for technical assistance or technical services, administrative fees

(f) payments for contracted work

(g) the income of nationals of the other Contracting Party engaged in investment-related activities in the territory of the other Contracting Party.

2. The above transfers shall be made at the rate of exchange prevailing in the Contracting Party receiving the investment at the date of transfer.

## Article 7.

If a Contracting Party or its agency guarantees an investment made by its investor in the territory of the other Contracting Party and makes payment to the investor accordingly, the other Contracting Party shall recognize the transfer of the rights or claims of such investor to the Contracting Party or its agency and the subrogation of the said rights or claims by the Contracting Party or its agency. The subrogated rights or claims shall not exceed the original rights or claims of such investor.

## Article 8.

1. Any dispute between the Contracting Parties arising out of the interpretation or application of this Agreement shall be settled through diplomatic negotiations to the extent possible.

2. If the dispute cannot be settled by agreement within six months, it may be referred to an ad hoc arbitral tribunal at the request of either Contracting Party.

3. The ad hoc tribunal shall be composed of three arbitrators. The Contracting Parties shall appoint one arbitrator within two months of the date on which one of the Contracting Parties receives a written notice of request for arbitration from the other Contracting Party. The two arbitrators shall jointly select, within two months thereafter, a third arbitrator who is a national of a third country with whom both Contracting Parties have diplomatic relations and who shall be appointed by both Contracting Parties as the presiding arbitrator.

4. If the arbitral tribunal has not been constituted within four months from the date of receipt of the written notice of the request for arbitration, and in the absence of any other agreement between the Contracting Parties, either Contracting Party may request the President of the International Court of Justice to appoint the arbitrator who has not yet been appointed.

If the President of the International Court of Justice is a national of any of the Contracting Parties or is otherwise unable to perform this function, the next senior judge of the International Court of Justice who is not a national of any of the Contracting Parties shall be requested to make such appointment.

5. The arbitral tribunal shall establish its own procedures. The arbitral tribunal shall make its decisions in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The decision of the Arbitration Tribunal shall be made by majority vote. The award shall be final and binding on the Contracting Parties. At the request of any of the Contracting Parties, the Arbitral Tribunal shall state the reasons for its decision.

7. The Contracting Parties shall bear the expenses of the arbitrators appointed by each of them and their participation in the arbitration proceedings. The expenses of the presiding arbitrator and of the arbitral tribunal shall be borne equally by the Contracting Parties.

## Article 9.

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

2. If the dispute cannot be settled by agreement within six months, either party to the dispute shall have the right to submit the dispute to a court of competent jurisdiction of the Contracting Party receiving the investment.

3. If a dispute involving the amount of compensation for expropriation is not resolved within six months after resorting to the procedure provided for in paragraph 1 of this Article, the dispute may be referred to an ad hoc arbitral tribunal at the request of either party to the dispute. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure provided for in the second paragraph of this Article.

4. The arbitral tribunal shall be established on a case-by-case basis in the following manner: each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators shall select as presiding arbitrator a national of a third State with which both Contracting Parties have diplomatic relations. The first two arbitrators shall be appointed within two months of the date on which one of the parties to the dispute notifies the other party in writing of its request for arbitration, and the presiding arbitrator shall be chosen within four months. If the arbitral tribunal has not been constituted within the above-mentioned period, either party to the dispute may request the Secretary-General of the ICSID to make the necessary appointments.

5. The arbitral tribunal shall establish its own procedures, but in doing so, it may refer to the ICSID Arbitration Rules.

6. The decision of the arbitral tribunal shall be made by majority vote. The arbitration shall be final and binding on both

parties to the dispute. The Contracting Parties shall be obliged to enforce the said award in accordance with their respective domestic laws and regulations.

7. The arbitral tribunal shall make its award in accordance with the laws and regulations (including conflict of laws rules) of the Contracting Party receiving the investment, the provisions of this Agreement, and generally recognized principles of international law accepted by both Contracting Parties.

8. The Parties to the dispute shall bear the expenses of the arbitrators appointed by them and their participation in the arbitration proceedings, and the remaining expenses of the presiding arbitrator and the arbitral tribunal shall be borne equally by the Parties to the dispute.

## Article 10.

If a Contracting Party, in accordance with its laws and regulations, grants more favorable treatment to an investor of the other Contracting Party in respect of an investment or investment-related activity than that provided for in this Agreement, it shall apply on a preferential basis.

## Article 11.

This Agreement shall apply to investments made in the territory of the other Contracting Party by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party before or after its entry into force.

## Article 12.

1. The representatives of the Contracting Parties shall meet from time to time for the following purposes.

(a) to review the implementation of this Agreement

(b) to exchange relevant legal information and investment opportunities

(c) to settle disputes arising out of investments

(d) To make proposals for the promotion of investments

(e) To study other matters relating to investment.

2. If either Contracting Party proposes consultations on any of the matters listed in paragraph 1 of this Article, the other Contracting Party shall respond in a timely manner. Consultations may be held alternately in Beijing and Kinshasa.

## Article 13.

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

2. This Agreement shall remain in force if either Party does not terminate it by notifying the other Party in writing one year prior to the expiration of the period of validity specified in paragraph 1 of this Article.

3. Either Party may terminate this Agreement at any time after the expiration of the first ten years of its validity; provided, however, that it shall give at least one year's prior written notice to the other Party.

4. The provisions of Articles I to XII of this Agreement shall continue to apply for ten years to investments made prior to the termination of this Agreement.

IN WITNESS WHEREOF, the Governments of the Parties have duly authorized their respective representatives to sign this Agreement.

Done in Beijing on this 18th day of December, 1997, in two copies, each in the Chinese and English languages, both texts being equally authentic.

For the Government of the People's Republic of China

Shi Guangsheng

(Signed)

For the Government of the Democratic Republic of the Congo

Mpoyo

(Signed)