

Agreement between the Government of the People 's Republic of China and the Government of the Republic of Gabon on the Promotion and Mutual Protection of Investments

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

Intending to create favourable conditions for investment by investors of each State within the territory of the other State, and

Recognizing that the encouragement and reciprocal protection of investment will stimulate business communication of investors and will increase prosperity in both States,

Desiring to intensify the 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,

1. The term "investment" means every kind of assets or capital contribution invested directly or indirectly by investors of one Contracting Party of the in the territory of the other Contracting Party in accordance with its laws and regulations, and shall include in particular, though not exclusively:

(a) movable and immovable property as well as any property rights in rem such as mortgages, pledges, real securities, usufructs and similar rights;

(b) shares, stocks and any other kind of participation in companies;

(c) claims to money or to any performance having an economic value associated with an investment;

(d) Copyrights, trademarks, patents, trade name and as well as all industrial properties, know-how and technologies;

(e) concessions of public interests conferred by law, including concessions to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investments provided in this Agreement.

2. The term "investor" means:

In respect of the Peoples Republic of China

(a) Natural persons who have nationality of the Peoples Republic of China and invest in the territory of the Republic of Gabon;

(b) Legal persons established in accordance with the laws of the People's Republic of China and having their seats in the territory of the People's Republic of China and invest in territory of the Republic of Gabon;

(a) Natural persons who have nationality of the Republic of Gabon and invest in the territory of the People's Republic of China;

(b) Legal persons established in accordance with the laws of the Republic of Gabon and having their seats in the territory of the Republic of Gabon and invest in territory of the People's Republic of China;

3. The term returns means the net profit after taxation yielded by an investment, includes but without limit to profits, dividends, royalties and any legitimate income.

4. The term territory means:

(a) In respect of the People's Republic of China, the territory of the People's Republic of China as defined in its laws and areas over which it has sovereign rights or jurisdiction in accordance with international law.

(b) In respect of the Republic of Gabon, the territory of the Republic of Gabon includes territorial sea and areas such as subbed, subsoil and uperjacent waters over which the Republic of Gabon has the sovereignty right of exploration and development of natural resources in accordance with international law.

Article 2. Promotion and Protection 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.

Any expansion, change or transformation of investments in accordance with the effective laws and regulations of the hosting State shall be regarded as investments.

2. Investments of investors of either Contracting Party shall be accorded fair and equitable treatment and protection, and shall enjoy adequate and full protection in the territory of the other Contracting Party. Each Contracting Party shall ensure the management, maintenance, using, procession or assignment of investments of the other Contracting Party shall in no way be subject to unjustified or discriminatory measures within its territory, without prejudice to its domestic laws or regulations.

Profits of investment and re-investment in accordance with laws of the other Contracting Party shall enjoy the equivalent protection with respect to initial investment.

Article 3. Investment Treatment

1. Either Contracting Party shall ensure the fair and justice treatment for the investment of the other Contracting Party in its territory, such treatment shall not be less than the treatment provided to domestic investors subject to its laws and regulations or not less than the most favourable treatment where the latter is more favourable.

Either Contracting Party shall ensure the fair and justice treatment for the investment of the other Contracting Party in its territory, such treatment shall be no less than the treatment provided to domestic investors subject to its laws and regulations or no less than the most favourable treatment, such treatment mentioned above shall be applied with priority.

2. The most favourable treatment shall not be applied to the preferable treatment provided by virtue of participating or joining free trade zone, economic or taxation union, common market or any other forms of area economic organizations, or any preferable treatment provided to investors of the third State in accordance with similar international agreement, or avoiding double taxation agreement or any other taxation agreements.

Article 4. Expropriation and Compensation

1. Neither Contracting Party shall take any measures of expropriation nationalization or any dispossession having effect equivalent to nationalization or expropriation against the investments made by investors of the other Contracting Party except under the following conditions:

(a) for the public interests;

(b) under domestic legal procedure;

(c) without discrimination;

(d) against compensation.

2. The compensation mentioned in Paragraph 1 (d) of this Article shall be equivalent to the value of the expropriated investments immediately at the time of the expropriation taken place or known to the public.

3. Rules for verification and payment of compensation shall be made without undue delay. Compensation shall be paid to investors by means of a convertible currency, and be freely transferable.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, a state of national emergency, revolt, riot or other similar events 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, if any, no less favourable than treatment which the latter Contracting Party accords to investors of the most-favored nation.

Article 6. Transfers

1. Each Contracting Party shall, subject to its foreign exchange laws and regulations, guarantee to the investors of the other Contracting Party the free transfer of investment and net cash profit into convertible currencies in its territory, include, especially:

(a) assets or supplement money for the purpose of maintaining or increasing investment;

(b) profits, dividends, interests, royalties and any other daily income;

(c) payments pursuant to loan in connection with investments;

(d) total or partial sale or liquidation of investments;

(e) compensation for enforcement of Article 4, Article 5

(f) the earnings or other compensations of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;

2. The transfer mentioned in Para.1 shall be made at the effective rate of exchange applicable on the date of transfer.

3. Treatment provided in this Article shall at least be equivalent to the treatment accorded to investors of the most-favored nation where under similar circumstances.

Article 7. Subrogation

1. Where one Contracting Party or any of its institution has granted any guarantee against non-commercial risks in respect of an investment by its investor and has made payment to such investor under that guarantee, the other Contracting Party shall recognize subrogation of the rights of the insured investor.

2. As for any investment under security, the guarantor may enjoy all rights owned by the investor where the guarantor does not exercise the right of subrogation.

Article 8. Applicable Rules

Where any issue governed by this Agreement, and domestic laws of one Contracting Party, or existing or international agreements in the future, investor of the other Contracting Party may choose the preferable provisions for application.

Article 9. 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 with consultation through diplomatic channel.

2. If a dispute cannot thus be settled, it shall be submitted to a mixed committee with all members from both Contracting Parties, the mixed committee shall hold meeting without delay.

3. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting party, be submitted to an arbitral tribunal.

4. Such tribunal shall be constituted in the following way: each party to the dispute shall appoint an arbitrator. These two arbitrators shall appoint an arbitrator as Chairman who shall be a national of a third State. The arbitrators shall be appointed within three months and the Chairman within five months from the date when the concerned party notified the other party of its submission of the dispute to arbitration.

5. If the arbitral tribunal has not been constituted within the period settled in the Paragraph 4 above, either Contracting Party shall 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 function, either Contracting Party shall invite the Vice President of the International Court of Justice to make any necessary appointments.

If the Vice President is a national of either Contracting Party or is otherwise prevented from discharging the said function, one senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments

6. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties.

Article 10. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party

1. Any legal dispute between one Contracting Party and an investor of the other Contracting Party in connection with an investment in the territory of the former 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 through negotiations within six months, the investor may choose and submit the dispute to:

(a) the competent court of the Contracting Party in the territory of which the investment has been made; or

(b) the International Centre for the Settlement of Investment Disputes (ICSID) which established by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States opened for signature at Washington DC on March 18, 1965, for arbitration.

For this purpose, consent of any dispute with respect to the amount of compensation in the case of expropriation submitted to this tribunal procedure by either Contracting Party shall be non-withdrawal consent. Other disputes submitted to this tribunal procedure shall be under mutual consent of both Contracting Parties.

3. Neither Contracting Party of this Agreement, as a party of any dispute, may raise any objection at any stage of the arbitration proceedings or enforcement of tribunal awards, where the other party may be paid of compensation of losses in accordance with insurance contract.

4. The arbitral tribunal shall deliver awards in accordance with domestic laws of the hosting Contracting Party, including rules of conflicts law, provisions of this Agreement, provisions of special agreement for the investment, and principles of international law.

5. The tribunal award shall be final and binding upon both Contracting Parties. Either Contracting Party shall undertake responsibilities to enforce such award in accordance with its domestic laws.

Article 11. Application

As for matters in the future where this Agreement may be applicable, shall include investments by means of foreign currencies made by investors of one Contracting Party in the territory of the other Contracting Party subject to laws and regulations of the other Contracting Party.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 30 days after the date of the last notice, notifying the other Contracting Party that the requirements of legislation procedure have been fulfilled. This Agreement shall remain in force for a period of 10 years. If either Contracting Party does not notify the other Contracting Party to terminate this Agreement six months in advance before termination, this Agreement shall continue to be effective for a further period of ten years, and shall thereafter be renewable accordingly.

Either Contracting Party preserves the right to terminate this Agreement by delivering written notice to the other Contracting Party at least six months in advance before the termination of this Agreement.

This Agreement shall continue to be effective for a further period of ten years from the date of its termination in respect of investments made before the date of termination of this Agreement.

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

Done in duplicate at Libreville on May 9, 1997 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 Gabon