

# **Agreement between the Government of the People's Republic of China and the Government of the Federal Republic of Nigeria on the Promotion and Protection of Investment**

The Government of the People's Republic of China and the Government of the Federal Republic of Nigeria (hereinafter referred to as "Contracting Parties") recognize that mutual promotion and protection of investment will contribute to the promotion of commercial incentives and contribute to the development of both Contracting Parties and to the prosperity of both countries;

Recognizing that investors are obliged to respect the sovereignty and laws of the host country;

Decides to create favorable conditions for investors of one Contracting Party to expand their investment in the territory of the other Contracting Party;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means the property invested by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party. In particular, but not limited to:

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

(B) the rights arising from the shares, stocks, bonds and other interests of the company, including the joint venture;

(C) the right to claim a financial claim with a financial claim or a contract;

(D) intellectual property rights, technological processes, know-how and goodwill;

(E) the concessions granted under the law, including the right to explore, explore or exploit natural resources.

2. The term "proceeds" means money arising from investments, including, but not limited to, profits, interest, capital gains, dividends, royalties and expenses;

3. "Investor" includes nationals and companies of both Contracting Parties;

4. The term "national" means, in the case of any of the Contracting Parties, a natural person having the nationality of that Contracting Party;

5. The term "company" means a company, firm and organization established or formed in the territory of that Contracting Party in accordance with the laws of either Contracting Party;

6. The term "territory" refers to the land, water, territorial waters of a Contracting State and the continental shelf and exclusive economic zone in which the sovereign rights and jurisdiction of the State are exercised in accordance with international law.

## **Article 2. Investment Promotion and Protection**

1. Any Contracting Party shall promote economic cooperation within the framework of its laws and regulations by protecting the investments of nationals and companies of the other Contracting Party in its territory. Parties shall accept such investments without prejudice to the exercise of the powers conferred by laws and regulations.

2. Each Contracting Party shall endeavor to assist the other Contracting Parties in engaging in investment-related activities in the territory of the former Contracting Party in obtaining visas and work permits.
3. The Contracting Party shall ensure that the investments of nationals and companies of the other Contracting Party shall be treated in a fair and equitable manner and shall not affect the nationals and companies to operate, manage, maintain, use, benefit or dispose of their investments by unreasonable or discriminatory measures.
4. In particular, a Contracting Party shall, in accordance with its laws and regulations, grant the investment at a rate not less favorable than that accorded to its national investment and shall in no case be less favorable than that accorded to any third national and corporate investment, protection.
5. The treatment and protection referred to in paragraphs 3 and 4 of this Article shall not include preferential treatment granted to third States on the basis of customs union, free trade area, economic union, avoidance of double taxation or facilitation of border trade agreements.
6. If a Contracting Party gives a preference for the investment or investment-related activities of the other Contracting Party in accordance with its laws and regulations, it shall be more favorable than the provisions of this Agreement.

### **Article 3. Compensation for Losses**

1. The investment of the Contracting State and the Contracting Party in the territory of the other Contracting Party suffered as a result of war or other armed conflict, revolution, national emergency, rebellion, rebellion or riot, and the treatment accorded by the latter Party Status, repayment, compensation or other indemnity shall not be less favorable than that accorded to any third national and national company.
2. Either Contracting Party shall not impose a collection, nationalization or similar measure in the territory of the other Contracting Party on the investment in its territory unless the following conditions are met:
  - (A) for public interest;
  - (B) in accordance with domestic legal procedures;
  - (C) the measures taken are non-discriminatory;
  - (D) to give compensation.
3. The compensation referred to in paragraph 2 (d) of this Article shall be equal to the value of the levied investment at the time of the expiration of the announcement and shall be paid in a convertible currency and freely transferable. The payment of the compensation should not be unreasonably delayed.

### **Article 4. Transfers**

The Contracting Parties shall ensure that investments relating to investments are transferred. The transfer shall be made in a convertible currency and shall not be unreasonably restricted or delayed. The transition includes, but is not limited to,

- (A) profits, interest, dividends and other income;
- (B) the amount to be used for the following purposes:
  1. procurement of raw materials, auxiliary raw materials, semi-finished or finished products;
  2. to ensure the continuity of investment and the resettlement of capital assets;
  3. the expansion and improvement of investment;
- (C) loan repayment;
- (D) royalties or fees, including technical service fees and management fees;
- (E) national income;
- (F) income from the sale or liquidation of investment;
- (G) Payment of contracted works.

## **Article 5. Subrogation**

If the Contracting Party or its institution provides security to an investor in an investment in the territory of the other Contracting Party and is paid to the investor accordingly, the other Contracting Party shall acknowledge that the investor's right or claim has been transferred A Contracting Party or its institution and acknowledges the subrogation of such rights by either Contracting Party or its institution. The right of subrogation or the right of claim shall not exceed the original right or claim of the investor.

## **Article 6. Settlement of Investment Disputes**

1. Any dispute arising between an investor of the Contracting Party and an investment between the other Contracting Party in respect of an investment in the territory of the other Contracting Party shall be settled as far as possible by the parties to the dispute.
2. If the dispute fails to be settled within six months, the disputing party has the power to submit the dispute to the court of competent jurisdiction in which the Contracting Party accepts the investment.
3. Disputes relating to the collection of compensation shall not be settled within six months of the procedure referred to in paragraph 1 of this Article and may be submitted to the arbitral tribunal at the request of either party. The provisions of this paragraph shall not apply if the relevant investor has resorted to the procedure laid down in paragraph 2 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 who shall elect a national of a third country which has diplomatic relations with the Contracting Parties as the chief arbitrator. The first two arbitrators shall be appointed within two months after the disputing party has notified the other party in writing of the arbitration, and the presiding arbitrator shall be elected within four months. If the arbitral tribunal has not yet been formed within the above-mentioned period, any party to the dispute may bring the necessary appointments to the Secretary-General of the International Center for Settlement of Investment Disputes.
5. The arbitral tribunal shall establish its own arbitral proceedings. However, the arbitral tribunal may, in formulating the procedure, refer to the International Center for Arbitration of Investment Disputes.
6. The arbitral tribunal's decision shall be made by a majority of votes. The verdict is final and binding on both sides of the dispute. The Contracting Parties shall be obliged to enforce the above-mentioned decision.
7. The arbitral tribunal shall decide on the basis of the law of the Contracting Party accepting investment, including its conflict of laws rules, the provisions of this Agreement and the universally recognized principles of international law accepted by the Contracting Parties.
8. The parties to the dispute shall bear the costs of their appointed arbitrators and their attendance at the arbitral proceedings, the costs of the presiding arbitrator and the remaining costs of the arbitral tribunal shall be borne equally by both parties to the dispute.

## **Article 7. Settlement of Disputes between the Contracting Parties**

1. Disputes arising from the interpretation or application of this Agreement by both Contracting Parties shall be settled through diplomatic channels.
2. If the Contracting Parties fail to reach an agreement in twelve months, the dispute shall be submitted to the arbitral tribunal composed of three arbitrators at the request of either party. Each of the Contracting Parties shall each appoint an arbitrator, who shall nominate a third national who has diplomatic relations with the Contracting Parties as the third arbitrator. The third arbitrator shall be appointed by the Contracting Parties as the chief arbitrator of the arbitral tribunal.
3. If the Contracting Party does not appoint an arbitrator and has not completed the appointment within two months after receipt of an invitation to arbitration by the other Contracting Party, the arbitrator shall be appointed by the President of the International Court of Justice at the request of the latter Party.
4. If the appointment of the presiding arbitrator of the arbitral tribunal has not been completed within two months of the appointment of the two arbitrators, there shall be no other agreement between the Contracting Parties and the presiding arbitrator shall be appointed by the President of the International Court of Justice Make an appointment.
5. In the circumstances provided for in paragraphs 3 and 4 of this article, the appointment shall be made by the Vice-

President of the International Court of Justice if the International Court of Justice is a national of either Contracting Party or is unable to perform such duties for any other reason. If the Vice-President is a national of either Contracting Party or is unable to perform that duty for any other reason, the appointment shall be made by the most senior judge of the International Court of Justice who is not a national of either Contracting Party.

6. The arbitral tribunal shall determine its own procedures.

7. The Contracting Parties shall bear the costs of their respective appointed arbitrators and their attendance at the arbitral proceedings. The costs of the presiding arbitrator and the remaining costs of the arbitral tribunal shall be borne equally by both Contracting Parties.

8. The arbitral tribunal's decision is final and binding on both parties.

## **Article 8. Application**

The provisions of this Agreement shall also apply to investments made prior to the date of entry into force.

## **Article 9. Changes or Amendments**

Any changes or amendments to this Agreement shall be made in writing and shall enter into force upon confirmation by the Parties on a diplomatic basis by means of a note.

## **Article 10. Entry Into Force**

This Agreement shall enter into force on the date on which the Parties shall comply with their respective domestic legal procedures and shall communicate with each other in writing.

## **Article 11. Validity and Termination**

This Agreement shall remain in force for a period of ten years. Thereafter, this Agreement shall remain in force if the other Contracting Party has not notified the other Contracting Party of this Agreement in writing twelve months before the expiry date. If the investment is made prior to the termination of this Agreement, this Agreement shall remain in force for a period of ten years from the date of its termination.

The parties have duly authorized their respective representatives to sign this Agreement with a view.

This Agreement was signed in Abuja on 12 May 1997 in duplicate in the Chinese and English languages, both of which are equally authentic.

Representative of the Government of the People 's Republic of China

Wu Yi

(signature)

Representative of the Government of the Federal Republic of Nigeria

Muhammad Barababa Alto

(signed)