AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to create favorable 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 will be conducive to stimulate business initiative of the 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 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, through not exclusively, includes:

(a) Movable and immovable property and other property rights such as mortgages and pledges;

(b) Shares, debentures, stock and any other kind of 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 particularly copyrights, patents, trade-marks, trade-names, technological process, known-how and good-will;

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

Any change in the form in which assets are invested does not affect their character as investments.

2, The term "investors" mean,

(a) Natural persons who are nationals of either Contracting Party in accordance with the laws of that Contracting Party;

(b) Economic entities, including companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of either Contracting Party and have their seats in that Contracting Party, irrespective of whether or not for profit and whether their liabilities are limited or not.

3, The term "return" means the amounts yielded from investments, including profits, dividends, interests, capital gains, royalties and other legitimate income.

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 admit such investments in accordance with its laws and regulations.

2, Investments of the investors of either Contracting Party shall enjoy the constant protection and security in the territory of the other Contracting Party.

3, Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.

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

Article 3. Treatment of Investment

1, Investments by investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party

2, Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.

3, Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third State.

4, The provisions of Paragraphs 1 to 3 of this Article shall not be construed 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 customs union, free trade zone, economic union and any international agreement resulting in such customs union, free trade zone, economic union;

(b) Any international agreement or arrangement relating wholly or mainly to taxation;

(c) Any international agreement or arrangement for facilitating frontier trade.

Article 4. Expropriation

1, Neither Contracting Party shall expropriate, nationalize or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met:

(a) For the public interests;

(b) Under domestic legal procedure;

(c) Without discrimination;

(d) Against compensation.

2, The compensation mentioned in paragraph 1 of this Article shall be equivalent to the value of the expropriated investments immediately before the expropriation is made or the impending expropriation becomes public knowledge, whichever is early. The value shall be determined in accordance with internationally recognized principles of valuation. The compensation shall include interest at the current rate prevailing in the London inter-bank financial market(LIBOR) applicable to the currency in which the investment was originally made from the date of expropriation until the date of payment. The compensation shall also be made without delay, be effectively realizable and freely transferable.

Article 5. Compensation for Damages and 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, insurrection, 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 and other settlements no less favorable than that accorded to the investors of its own or any third state.

Article 6. Repatriation of Investments and Returns

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

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

(b) Proceeds obtained from the total or partial sale or liquidation of investments;

(c) Payments pursuant to a loan agreement in connection with investments;

(d) Royalties in relation to the matters in paragraph 1 (d) of Article 1;

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

(f) Payments in connection with contractual projects;

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

2, Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement.

3, The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable to the Contracting Party accepting the investments and on the date of transfer.

Article 7. Subrogation

If one Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of all the rights and claims of the indemnified investor to the former Contracting Party or its designated agency, by law or by legal transactions, and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right to same extent as the investor.

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 with consultation through diplomatic channels.

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

3, such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Contracting Parties as chairman of the arbitral tribunal.

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 appoint the two arbitrators. 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 decision 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 decision 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 of its decision.

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

Article 9. Settlement of Disputes between Investors of One Contracting Party and the other Contracting Party

1, Any 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.

2, If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3, Any dispute, if unable to be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, shall be submitted at the request of either party to

(a) 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; orConvention on the Settlement of Disputes between States and Nationals of other states, done at Washington on March 18, 1965; or

(b) An ad hoc arbitral tribunal

Provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedure specified by the laws and regulations of that Contracting Party before submission of the dispute the aforementioned arbitration procedure.

However, if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article, the provisions of this Paragraph shall not apply.

4, Without prejudice to Paragraph 3 of this Article, the ad hoc arbitral tribunal referred to in Paragraph 3 (b) shall be constituted for each individual case in the following way: each party to the dispute shall appoint one arbitrator, and these two shall select a national of a third State which has diplomatic relations with both Contracting Parties as the Chairman. The first two arbitrators shall be appointed within two months of the written notice requesting for arbitration by either party to the dispute to the other and the chairman shall be selected within four months. If, within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the necessary appointment of the arbitrator.

5, The ad hoc arbitral 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.

6, The tribunal referred to in Paragraph 3 (a) and (b) of this Article shall reach its award by a majority of votes. Such awardis final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

7, The tribunal referred to in Paragraph 3 (a) and (b) of this Article 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 applicable principles of international law.

8, Each party to the dispute shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the chairman and tribunal shall be borne in equal parts by the parties to the dispute. The tribunal may in its award direct that a higher proportion of the costs be borne by one of the parties to the dispute.

Article 10. Other Obligations

Nothing in this Agreement shall be construed as affecting any rights and obligations arising from any international Agreement or treaty already entered into by the Contracting Parties.

Article 11. Application

This Agreement shall apply to investments, which are made prior to or 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. Relations between Contracting Parties

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relation between the Contracting Parties.

Article 13. 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, Where either Contracting Party requests consultation on any matter of paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternatively in Gaborone and Beijing.

Article 14. Entry Info Force, Duration and Termination

1, This Agreement shall enter into force 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 necessary thereof have been fulfilled and 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 of the period specified in Paragraph 1 of this Article.

3, After the expiration of 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 Article 1 to 13 shall continue to be effective for a further period of ten years from such date of termination.

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

Done in duplicate at Beijing on 12 June, 2000 in the Chinese and English languages, both texts being equally authentic.

For the Government of The Republic of Botswana

For the Government of the People's Republic of China