

# **Agreement between the Government of the Independent State of Papua New Guinea and the Government of the People's Republic of China for the Promotion and Protection of Investments**

The Government of the Independent State of Papua New Guinea and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties);

Desiring to expand and deepen the economic and industrial cooperation on a long term basis and in particular, to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party on the principles of mutual respect for sovereignty, equality and mutual benefit;

Recognizing the need to protect investments of nationals and companies of both Contracting Parties and to stimulate the flow of investments with a view to fostering the economic prosperity of both Contracting Parties;

Have agreed as follows;

## **Article 1. Definitions**

For the purpose of this Agreement,

1. "Investment" means every kind of asset admitted by either Contracting Party subject to its laws and regulations and in particular, though not exclusively, includes:

- (a) Movable and immovable property and other property rights such as mortgages, liens or pledges;
- (b) Shares, stock and debentures of companies or interests in the property of such companies;
- (c) A claim to money or a claim to any performance having a financial value;
- (d) Intellectual and industrial property rights and goodwill;
- (e) Business concessions conferred by law, including concessions to search for, cultivate, extract or exploit natural resources.

2. "National" means:

- (a) In respect of the People's Republic of China, any person who is a citizen of the People's Republic of China; according to its laws; and
- (b) In respect of the Independent State of Papua New Guinea, citizens within the meaning of the constitution of the Independent State of Papua New Guinea.

3. "Company" means:

- (a) In respect of the People's Republic of China, corporations, firms or associations incorporated or constituted under the laws in force in the People's Republic of China; and
- (b) In respect of the Independent State of Papua New Guinea, corporations, firms or associations incorporated or constituted under the laws in force in the Independent State of Papua New Guinea.

4. "Returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other

Contracting Party to make investments in its territory and subject to its right to exercise powers conferred by its laws and regulations shall admit such investments.

2. Investment of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Each Contracting Party shall ensure, subject to its laws and regulations, that the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investments of national or companies of the other unreasonable or discriminatory measures in its territory.

4. Each Contracting party shall encourage and promote joint ventures between investors of the two countries in all possible fields.

### **Article 3. Most Favored Nation Provisions**

1. Investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall not be subjected to a treatment less favourable than that accorded to investments of nationals or companies of any third State.

2. Nothing in this Article or in the immediately preceding Article shall be interpreted as imposing a legal obligation on either Contracting Party to extend to the nationals or companies of the other, the benefit of any treatment, preference or privilege which may be accorded to any nationals or companies of other State by virtue of the formation of a customs union, a free trade area or any other agreement or agreement relating wholly or mainly to taxation, any regional or sub-regional agreement relating to movement of capital to which such State may be party.

### **Article 4. Compensation for Losses**

Nationals or companies 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, insurrection or riot in the territory of the later Contracting Party shall be accorded by later Contracting Party, treatment, as regards relevant compensatory measures which are adopted, not less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

### **Article 5. Expropriation and Nationalization**

Neither Contracting Party shall subject investments in its territory of nationals or companies of the other Contracting Party to the measures of expropriation, nationalization or other similar measures except under the following conditions:

(a) The measures are taken for a public purpose and in conformity with legal provision;

(b) The measures are non-discriminatory, and against compensation;

(c) The compensation shall be appropriate or tantamount to the value of an investment immediately before the measures of expropriation, nationalization or other Similar measures are taken or became public knowledge. The compensation shall be paid in a freely convertible currency without undue delay and be freely transferable between the two Contracting Parties.

### **Article 6. Repatriation of Investments**

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the transfer in any freely usable currency:

(a) The net profits, dividends, royalties, technical assistance and technical services fees, interests and other current incomes, accruing from any investments of a national or company of the other Contracting Party;

(b) The proceeds of the total or partial liquidation of any investment made by a national or company of the other Contracting Party;

(c) Funds in repayment of borrowing by nationals or companies of the other Contracting Party which both Contracting Parties have recognized as investments; or

(d) The earning of nationals of the other Contracting Party who are permitted to work in its territory.

2. The transfer referred to in the foregoing paragraph shall be conducted within a reasonable period at the official exchange rate being applied on the date of transfer, or at the rates of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfer referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by nationals or companies of any third States. paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by nationals or companies of any third States.

4. The Contracting Parties shall guarantee to nationals and companies, transfer referred to in this Agreement subject to the right of a Contracting Party in exceptional financial or economic circumstances, to exercise equitably and in a good faith powers conferred by its law for the time being in force.

## **Article 7. Consultations between the Contracting Parties**

The Contracting Parties shall consult when necessary on matters concerning the application and operation of this Agreement based on the principle of mutual respect for sovereignty, equality and mutual benefit.

## **Article 8. Settlement of Investment Disputes between a Contracting Party and a National or Company of the other Contracting Party**

1. Any dispute between a national or company of either Contracting Party with respect to investment within the territory of the latter Contracting party shall, as far as possible, be settled amicably through consultation and negotiation between the parties to the dispute.

2. If a dispute concerning the amount of compensation referred to in the provisions of paragraph (c) of Article 5 between a national or company of either Contracting Party and the other Contracting Party can not be settled within six months from the date on which either party requests consultation for the settlement, such dispute shall, at the request of such national or company, be submitted to a conciliation board or an arbitration board, to be established with reference to the Convention on the Settlement of Investments Disputes between States and Nationals of Other States done at Washington on March 18, 1965 (hereinafter referred to as "the Washington convention"). Any dispute concerning other matters between a national or company of either Contracting Party and the Other Contracting Party may be submitted by agreement, to a conciliation board or an arbitration board as stayed above. In the event that such national or company has resorted to administration or judicial settlement within the territory of the latter Contracting Party, such dispute shall not be submitted to arbitration. paragraph (c) of Article 5 between a national or company of either Contracting Party and the other Contracting Party can not be settled within six months from the date on which either party requests consultation for the settlement, such dispute shall, at the request of such national or company, be submitted to a conciliation board or an arbitration board, to be established with reference to the Convention on the Settlement of Investments Disputes between States and Nationals of Other States done at Washington on March 18, 1965 (hereinafter referred to as "the Washington convention"). Any dispute concerning other matters between a national or company of either Contracting Party and the Other Contracting Party may be submitted by agreement, to a conciliation board or an arbitration board as stayed above. In the event that such national or company has resorted to administration or judicial settlement within the territory of the latter Contracting Party, such dispute shall not be submitted to arbitration.

3. The conciliation or arbitration board referred to in the provisions of paragraph 2 of this Article shall be composed of three arbitrations, with each party appointing one arbitrations within a period of sixty days from the date of receipt by either party from the party of a notice requesting arbitration of the dispute referred to in the provisions of paragraph 2 of this Article and the third arbitrator to be agreed upon as the President of the arbitration board by the two arbitrators so chosen within a further period of ninety days, provided that the third arbitrator shall not be a national of either Contracting Party. paragraph 2 of this Article shall be composed of three arbitrations, with each party appointing one arbitrations within a period of sixty days from the date of receipt by either party from the party of a notice requesting arbitration of the dispute referred to in the provisions of paragraph 2 of this Article and the third arbitrator to be agreed upon as the President of the arbitration board by the two arbitrators so chosen within a further period of ninety days, provided that the third arbitrator shall not be a national of either Contracting Party.

4. If the third arbitration is not agreed upon between the arbitrations appointed by each party within the period referred to in provisions of paragraph (3) of the present Article, either party shall request the third part agreed upon in advance by both parties to appoint the third arbitration who shall be a national of a third country which has diplomatic relations with both Contracting Parties. paragraph (3) of the present Article, either party shall request the third part agreed upon in advance by both parties to appoint the third arbitration who shall be a national of a third country which has diplomatic relations with both Contracting Parties.

5. The arbitral procedures shall be determined by the arbitrations board with reference to the Washington Convention.
6. The decision of the arbitration board shall be final and binding. Execution of decision of the arbitration board shall be governed by the laws and regulations concerning the execution of decision in force in the State in whose territories such execution is sought. The arbitration board shall state the basis of its decision and state the reasons at the request of either party.
7. Each party shall bear the cost of its own arbitrations and its representation in the arbitral proceedings. The cost of the President of the arbitration board in discharging his duties and the remaining costs of the arbitration board shall be borne equally by the parties concerned.
8. When and after a case is submitted to the arbitration board referred to in the provisions of paragraph (2) of the present Article, no claim concerning such case shall be made between States. paragraph (2) of the present Article, no claim concerning such case shall be made between States.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
2. If a dispute between the Contracting parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of make any necessary appointment, invite the president of the International Court of Justice to make any necessary appointments. If the Presidents in a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice president is a national of either Contracting Party or if he too is prevented from discharging the said function, a member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make necessary appointments. paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of make any necessary appointment, invite the president of the International Court of Justice to make any necessary appointments. If the Presidents in a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice president is a national of either Contracting Party or if he too is prevented from discharging the said function, a member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## **Article 10. Subrogation**

If a Contracting Party makes a payment to any of its national or company under a guarantee it has granted in respect of an investment, the other Contracting Party shall recognize the transfer of any right or title of such national or company Party to the former Contracting party and the subrogation of the former Contracting party to any right or title. The subrogated right or title shall not be greater than the original right or title of the said national or company.

## **Article 11. Application to Investments**

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation, rules or regulations by nationals or companies of the other Contracting Party prior to as well as after the entry in to force of this Agreement.

## **Article 12. Entry and Sojourn of Personnel**

1. A Contracting party shall, subject to its laws and policies applicable from time to time relating to the entry and sojourn of non-citizens, permit nationals of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities associated with investment.

2. A Contracting Party shall, subject to its laws and policies applicable from time to time, permit nationals and companies of the other Contracting Party who have made investments in the territory of the former Contracting Party to employ within its territory key technical and managerial personnel of their choice regardless of citizenship.

### **Article 13. Entry Into Force, Duration and Termination**

1. The present Agreement shall enter into force on the thirtieth day after the date of exchange of notification confirming that the procedures required under domestic laws for its entry into force have been completed in each State. It shall remain in force for a period of fifteen (15) years and shall continue to be in force thereafter until terminated in accordance with the provisions of paragraph (2) of the present Article.paragraph (2) of the present Article.

2. Either Contracting party may, by giving one year's advance notice in writing to the other Contracting Party, terminate the present Agreement at the end of the initial fifteen (15) years period or at any time thereafter.

3. In respect of investments and returns acquired prior to the date of termination of present Agreement the provisions of Article 1 to 12 shall continue to be effective for a further period of fifteen (15) years from the date of termination of the present Agreement.Article 1 to 12 shall continue to be effective for a further period of fifteen (15) years from the date of termination of the present Agreement.

Done at BEIJING on the 12th of April, 1991, in the English and Chinese languages, both texts being equally authentic.

For the Government of the Independent States of Papua New Guinea

For the Government of the People's Republic of China