

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

The Government of the Republic of Namibia and the Government of the People's Republic of China;

RECOGNISING the growing importance of international investment in the world economy and its contribution to development and economic growth in their countries;

DESIRING to create favourable conditions for investment by investors of either Contracting Party in the territory of the other Contracting Party with due respect to national policy objectives;

PROMOTING the interest of all parties and beneficiaries on a mutually advantageous basis;

ACKNOWLEDGING the right of Contracting Parties to regulate, on a non-discriminatory basis, the manner and flow of investments within their territories;

RECOGNISING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Contracting Parties;

HEREBY AGREE as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset employed by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment is made in accordance with the laws and regulations of the other Contracting Party, and that the investment is not of a speculative nature. The term "investment" includes in particular, though not exclusively:

- (a) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) Shares, debentures, stock and any other kinds of equity participation in an enterprise;
- (c) Legitimate claims to money or to any performance having an economic value associated with an investment;
- (d) Intellectual property rights such as copyrights, patents, trade-marks, trade-names;
- (e) Business concessions or rights conferred by law or under contract.

Any change in the form in which assets are invested does not affect their character as investments provided that such change is made in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "investor" means:

(a) In respect of the Republic of Namibia:

(i) A natural person being a national of the Republic of Namibia and deriving such status from the law of Republic of Namibia; and

(ii) Legal persons incorporated or constituted in accordance with the law of the Republic of Namibia and having the seat, as well as effective economic activities in the territory of the Republic of Namibia;

Having made an investment in the territory of the other Contracting Party.

(b) In respect of the People's Republic of China:

(i) a natural person having the nationality of the People's Republic of China in accordance with the law of the People's Republic of China;

(ii) Economic entities, including companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of the People's Republic of China having their seats in the People's Republic of China, irrespective of whether or not for profit and whether their liabilities are limited or not.

Having made an investment in the territory of the other Contracting Party.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

4. The term "territory" means, respectively, the territory of the Republic of Namibia and the territory of the People's Republic of Namibia.

Article 2. Promotion of Investments

1. Each Contracting Party shall, subject to its policy in the field of foreign investment promote investment in its territory by investors of the other Contracting Party. Subject to its domestic laws and regulations, each Contracting Party shall admit investments.

2. Subject to its laws and regulations, a Contracting Party shall provide assistance in, and facilities for, obtaining necessary visas and work permits nationals of the other Contracting Party engaging in activities essential for such investments made in the territory of the former Contracting Party.

Article 3. Treatment of Investments

1. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Without prejudice to its laws and regulations, neither Contracting Party shall in any way impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

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

3. Each Contracting Party shall, in accordance with its laws and regulations, in its territory accord to investors of the other Contracting Party the same treatment, in like circumstances, as that which it accords to its own investors.

4. The provisions of paragraph 2 shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either Contracting Party is or may become a party; or

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

(c) Any arrangement for facilitating small scale frontier trade in border areas.

Article 4. Expropriation

1. Neither Contracting Party shall expropriate or nationalize (hereinafter referred to as "expropriation") an investment of an investor 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 investment immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall also be made without delay, be effectively realizable and freely transferable.

3. The investor affected by the expropriation shall have the right, under the domestic law of the Contracting Party making the expropriation, to prompt review, by a court of law or other independent and impartial forum of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in paragraph 1.

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 favourable than that accorded to the investors of its own or any third State, whichever is more favourable to the investor concerned.

Article 6. Transfers

1. Each Contracting Party shall without delay allow investors of the other Contracting Party the transfer subject to its laws and regulations of:

(a) Returns;

(b) The proceeds in case of total or partial sale or liquidation of the investment;

(c) Funds needed for the repayment of approved loans related to the investment;

(d) Earnings of nationals of the other Contracting Party employed in connection with an investment in its territory;

(e) Compensation paid pursuant to Articles 4 and 5.

2. Transfers shall be effected in any convertible currency at the prevailing market rate of exchange applicable on the date of transfer subject to any requirement stipulated by domestic laws and regulations.

3. In case of serious balance of payments difficulties and external financial difficulties or the threat thereof, each Contracting Party may temporarily restrict transfers, provided that such restriction: 1) shall be promptly notified to the other Party; 2) shall be consistent with the Articles of Agreement of the International Monetary Fund; 3) shall be within an agreed period; 4) would be imposed in an equitable, non-discriminatory and good-faith basis.

4. Each Contracting Party shall give due regard to the enforcement of judgements rendered in adjudicatory proceedings, through the equitable, non-discriminatory and good-faith application of its domestic laws.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled by means of consultations through the diplomatic channels.

2. Upon either Contracting Party's request for consultations under paragraph 1 of this Article, the other Contracting Party shall give prompt consideration thereto, and consultations shall be held within 2 months of such request. Each Contracting Party shall use its best efforts to settle such dispute expeditiously.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of a Contracting Party and the other Contracting Party in connection with an investment in the territory of the latter Contracting Party shall, as far as possible, be settled amicably through consultations between the parties to the dispute.

2. If such dispute cannot be settled through consultations within six (6) months from the date it has been raised by either party to the dispute, it shall be submitted by the choice of the investor, either to the competent court of the Contracting Party concerned or to international arbitration.

3. In case of international arbitration, the dispute shall be submitted to an ad-hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

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

4. Once the investor has submitted the dispute to the competent court of the Contracting Party concerned or to the ad-hoc arbitral tribunal referred to in Paragraphs 2 and 3 of this Article, the choice of procedure shall be final.

5. The arbitral tribunal shall render its award based on:

- (a) Provisions of this Agreement;
- (b) Laws of the Contracting Party concerned including its rules on the conflict of laws;
- (c) The principles of international law accepted by both Contracting Parties;
- (d) Specific bilateral agreements on investment between the Contracting Parties;
- (e) Other international treaties on investment to which both Contracting Parties are parties.

6. The arbitral award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

Article 10. Corporate Responsibility

Investors shall abide by the host country's laws, regulations, administrative guidelines and policies in the same manner as any domestic investor.

Article 11. Other Obligations

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected by this Agreement.

Article 12. Application

This Agreement shall apply to investments made prior to or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party concerned, but not apply to any dispute which arose before its entry into force.

Article 13. Consultations

1. 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;

2. Where either Contracting Party requests consultations on any matter of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultations is held alternately in Beijing and Windhoek.

Article 14. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on 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 therefor have been fulfilled, and remain in force for a period of ten (10) years.

2. This Agreement shall continue to be in force unless either Contracting Party has given written notice to the other Contracting Party to terminate this Agreement one year before the expiration of the initial ten year period or at any time thereafter.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to12 shall continue to be effective for a further period of ten years from such date of termination.

4. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures as required for entry into force of the present Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement. Done in duplicate at on in the English and Chinese languages, both texts being equally authentic.

For the Government of The Republic of Namibia

For the Government of The People's Republic of China