

## **APPENDIX VI (i)**

### **Seychelles BIT 2007**

#### **Agreement between the Government of the People's Republic of China**

#### **AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES ON THE RECIPROCAL**

#### **Promotion And Protection of Investments**

The government of the People's Republic of China and the government of the Republic of Seychelles hereinafter referred to as the Contracting Parties,

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for Chinese investments in Seychelles and, Seychellois investments in China,

Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

#### **Article 1.**

##### Definitions

For the purpose of this Agreement:

1. The term 'investment' means every kind of assets held or invested directly or indirectly and in particular, though not exclusively:

a) movable and immovable property and any other property rights such as mortgages, liens, usufructs or pledges;

b) shares, in and stock and debentures of a company and any other form of participation in a company including premium on shares and minority holding;

c) claims to the money or to any performance under contract having a financial value;

d) intellectual property rights, in particular copyrights, including mockups, and industrial property rights such as patents, trademarks, industrial designs (including industrial models), technical processes, trade names and goodwill;

e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in the maritime area of the Contracting Parties.

2. 'Invested indirectly' includes:

1) invested by an investor of one Contracting Party through a company which is fully or partially owned by the investor and having its seat in the territory of the other Contracting Party, and

2) investments of legal persons of a third State which are owned or controlled by investors of one Contracting Party and

which have been in the territory of the other Contracting Party in accordance with the laws and regulations of the latter. The relevant provisions of this Agreement shall apply to such investments only when such third State has no right or abandons the right to claim compensation after the investment had been expropriated by the other Contracting Party.

Any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party on the territory of which the investment is made.

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3. The term 'investor' means:

(a) nationals, that is, natural persons, possessing the nationality of either Contracting Party;

(b) corporations, partnerships and associations, incorporated or constituted under the law in force of either Contracting Party and having their head office in that Contracting Party; or corporations, partnerships and associations controlled directly or indirectly by natural persons who have the nationality of either Contracting Party or legal persons having their head office in either Contracting Party and incorporated or constituted under the law in force in that Contracting Party (hereinafter referred to as 'companies');

'Controlled indirectly' means corporations, partnerships and associations in a third country which are owned or controlled by natural persons who have the nationality of either Contracting Party or legal persons having their head office in either Contracting Party and incorporated or constituted under the law in force in that Contracting Party.

4. The term 'returns' means all amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees. Re-investment returns shall enjoy the same protection as returns.

5. The term 'territory' means:

The territory of each Contracting Party, and the continental shelf and the maritime area outwards the territorial sea of each Contracting Party over which they have in accordance with United Nations Convention on the Law of the Sea sovereign rights and jurisdiction with a view to prospecting, exploiting and preserving natural resources.

6. Nothing in this Agreement shall be construed to prevent any contracting party from taking any measure to regulate investment of foreign companies and the conditions of activities of these companies in the framework of policies designed to preserve and promote cultural and linguistic diversity.

## **Article 2. Scope of the Agreement**

For the purpose of this Agreement, it is understood that the Contracting Parties are responsible for the actions or omission of their sub-sovereign entities, including though not exclusively their federal states, regions, local governments or any other entity over which the Contracting Party exercises the control, the representation or the responsibility of its international affairs, or its sovereignty consistent with its internal legislation.

## **Article 3. Promotion and Admission of Investments**

Each Contracting Party shall promote and admit on its territory, in accordance with its legislation and with the provisions of this Agreement, investments made by investors of the other Contracting Party.

## **Article 4. Fair and Equitable Treatment**

Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by investors of the other Contracting Party on its territory, and shall ensure that the exercise of the right thus recognised shall not be hindered by law or in practice. In particular though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any discriminatory restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any hindrance of the sale or transport of products within the country and abroad, as well as any other measures that have a similar effect.

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Within the framework of their internal legislation, the Contracting Parties shall be favourably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made on the territory of the other Contracting Party.

## **Article 5. National Treatment and Most Favoured Nation Treatment**

Each Contracting Party shall apply on its territory to the investors of the other Party, with respect to their investments and activities related to the investments, a treatment not less favourable than that granted to its investors, or the treatment granted to the investors of the most favoured nation, if the latter is more favourable. In this respect, nationals authorized to work on the territory of one Contracting Party shall enjoy the relevant facilities to the exercise of their professional activities. This treatment shall not include the privileges granted by one Contracting Party to investors of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

The provisions of this Article shall not be construed so as to oblige one contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or domestic legislation relating wholly or mainly to taxation.

## **Article 6. Dispossession and Indemnification**

1. Investors of either Contracting Party shall not be deprived of their investment nor subjected to measures having, directly or indirectly, an effect equivalent to such deprivation in the area of the other Contracting Party except lawfully and on a non discriminatory basis, for a public purpose related to the internal needs of that Party, and against appropriate compensation as provide for in this Article. Such deprivation shall not be contrary to a particular obligation. Compensation shall amount to the real value of the investment immediately before the deprivation or before the impending deprivation became public knowledge whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without unreasonable delay and be effectively realized. The investor affected shall have a right, in accordance with the law of the Contracting Party making the deprivations, to prompt review by a judicial or other independent authority of that Party, of the investor's case and of the valuation of the investment in accordance with the principles set out in this paragraph.

2. Without prejudice to the general application of paragraph (1) of this Article, where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its area, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation referred to in paragraph (1) in respect of their investment to such investors of the other Contracting Party who are the owners of those shares.

3. Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own investors or to those of the most favoured nation.

## **Article 7.**

Free transfer

Each Contracting Party on the territory of which the investments have been made by investors of the other Contracting Party shall guarantee to these nationals and companies the free transfer of:

- a) interest, dividends, profits and other current income;
- b) royalties deriving from incorporeal rights as defined in Article 1, Paragraph 1, letters (d) and (e);

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- c) repayments of loans which have been regularly contracted;
- d) value of partial or total liquidation or disposition of the investment, including capital gains on the capital invested;
- e) compensation for dispossession or loss described in Article 5, Paragraphs 2 and 3.
- f) payments in connection with contracting projects.

The nationals of either Contracting Party, who have been authorized to work on the territory or in the maritime area of the other Contracting Party, as the result of an approved investment, shall also be permitted to transfer to their country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer in accordance with the laws of the Contracting States. When, in exceptional circumstances, capital movements from or to third countries cause or threaten to cause a serious disequilibrium to its balance of payments, each Contracting Party may temporarily apply safeguard measures to the transfers, provided that these measures shall be strictly necessary, would be imposed in an equitable, non-discriminatory basis and in accordance with the laws of the Contracting States.

The provisions of the foregoing paragraphs of this article do not prejudice a Contracting Party's exercise in good faith of its international obligation or of its rights and obligations by virtue of its participation or association in a free trade zone, customs union, common market, economic or monetary union or any other form of regional cooperation or integration.

## **Article 8. Settlement of Disputes between an Investor and a Contracting Party**

1. Any dispute concerning the investments occurring between one Contracting Party and an investor of the other Contracting Party shall endeavour to be settled amicably between the two parties concerned.

2. If the dispute cannot be settled through negotiations within six months from the date it has been raised by either party to the dispute, it shall be submitted by the choice of the investor:

a) to the competent court of the Contracting Party that is a party to the dispute; [or]

b) to International Centre 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, provided that the Contracting Party involved in the dispute may require the investor concern to go through the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the submission to the ICSID.

Once the investor has submitted the dispute to the competent court of the Contracting Party concerned or to the ICSID, the choice of one of the two procedures shall be final.

3. The arbitration award shall be based on the law of the Contracting Party to the dispute including its rules on the conflict of laws, the provisions of this Agreement as well as the universally accepted principle of international law.

4. The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Party shall commit themselves to the enforcement of the award.

## **Article 9.**

Guarantee and subrogation

If one 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,

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

## **Article 10. Special Commitment**

Investments having formed the subject of a special commitment of one Contracting Party, with respect to the investors of the other Contracting Party, shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said commitment if the latter includes provisions more favourable than those of this Agreement.

## **Article 11. Settlement of Disputes between Contracting Parties**

1. Disputes relating to the interpretation or application of this Agreement shall be settled, if possible, by diplomatic channels.

2. If the dispute has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.

3. The said Tribunal shall be created as follows for each specific case: each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed by mutual agreement a national of a third Country, who shall be designated as Chairman of the Tribunal by the two Contracting Parties. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.

4. If the periods specified in Paragraph 3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, 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 necessary appointments.

5. The tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the Contracting Parties.

The Tribunal shall set its own rules of procedure. It shall interpret the judgement at the request of either Contracting Party.

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

## **Article 12. Application**

This Agreement shall apply to investment 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 regulation of the Contracting Party concerned, but not apply to the disputes arose before its entry into force.

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

Each Party shall notify the other in writing of the completion of the internal legal procedures required concerning the entry into force of this Agreement, which shall enter into force from the first day one month after the later written notification being sent.

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The Agreement shall be in force for a period of ten years. It shall remain in force thereafter, unless one of the Contracting Parties gives written notice of termination 6 months in advance through diplomatic channels.

In case of termination of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Signed in Victoria, on February, 2007, done in duplicate in Chinese and English languages, both texts being equally authentic.

For the government of the People's Republic of China For the government of the Republic of Seychelles