

# Supplement to Official Gazette dated 22nd July, 1999

## AGREEMENT

### Between

THE GOVERNMENT OF BARBADOS

And

THE GOVERNMENT OF THE  
PEOPLES REPUBLIC OF CHINA

The Promotion and Protection of Investments

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BETWEEN

THE GOVERNMENT OF BARBADOS AND

THE GOVERNMENT OF THE PEOPLES REPUBLIC OF CHINA

CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Barbados and the Government of the Peoples Republic of China (hereinafter referred to as the Contracting Parties),

Desiring to create favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the Reciprocal encouragement, promotion and protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Desiring to intensify the economic co-operation of both States on the basis of equality and mutual benefit;

Hereby agree as follows:

### **Article 1. Definitions**

For the purposes 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, though not exclusively, includes:

- (a) movable and immovable property and any other property rights such as mortgages, liens and pledges;
- (b) shares, stocks, debentures and any other kind of participation in companies;
- (c) claims to money or to any other performance under contract having an economic value;
- (d) intellectual property rights, goodwill, technical processes and knowhow;
- (e) concessions conferred by law or under contract, including concessions to search for or exploit natural resources.

2. The term investors means

(a) in respect of the Peoples Republic of China:

I natural persons who have nationality of the Peoples Republic of China in accordance with its laws;

II economic entities established in accordance with the laws of the Peoples Republic of China and domiciled in the territory of the Peoples Republic of China:

(b) In respect of Barbados:

I natural persons who have the nationality of Barbados in accordance with its laws, or

n. any enterprise incorporated or duly constituted in accordance with the applicable laws of Barbados, who makes an investment in the territory of the other Contracting Party.

3. The term local administrative review procedure means the administrative procedures through which either investor may obtain a local administrative remedy.

4. The term returns means the amounts yielded by investments such as profits, dividends, interests, royalties or other legitimate income.

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

(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) Each Contracting Party shall grant assistance in and provide facilities for obtaining visas and work permits to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.

## **Article 3. Protection of Investments**

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(1) Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

(2) The treatment and protection referred to in paragraph 1 of this Article shall not be less favourable than that accorded to investments and activities associated with such investments of investors of a Third State.

(3) The treatment and protection as mentioned in paragraph 1 and 2 of this Article shall not include preferential treatment accorded by the other Contracting Party to investments of investors of a Third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

## **Article 4. Expropriation**

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

- (a) for the public interests;
- (b) in accordance with domestic legal procedure;
- (c) without discrimination;
- (d) for compensation;

(2) The compensation mentioned in paragraph 1 (d) of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation or impending expropriation became public knowledge. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. The compensation shall include interest at a current commercial lending rate applicable to the currency in which the investment was originally made from the date of expropriation until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

(3) Any investor affected by the expropriation shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 2 of this Article.

(4) Where a Contracting Party expropriates the assets of a company which was incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 to 3 of this Article are applied to the extent necessary to guarantee reasonable compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.

## **Article 5. Compensation for Losses**

Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to a war, a state of national emergency, insurrection, riot or other similar event, shall be accorded by the latter Contracting Party, if it takes relevant measures, treatment no less favourable than that accorded to investors of any Third State.

## **Article 6. Guarantee**

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

- (a) Profits, dividends, interest and other legitimate income;
- (b) amounts from total or partial liquidation of investments;
- (c) payments made pursuant to a loan agreement in connection with investment;
- (d) royalties paid in respect of matters referred to in paragraph 1 (d) at Article 1;
- (e) payments for technical assistance or technical service and management fees;
- (f) payments in connection with projects on contract;
- (g) earnings of nationals of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

1. The transfers mentioned above shall be made at the prevailing exchange

Rate of the Contracting Party accepting the investment on the date of transfer.

## **Article 7. Subrogation**

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

## **Article 8. Disputes Concerning Interpretation or Application of Agreement**

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through the diplomatic channel.

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

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(3) The arbitral tribunal shall comprise three arbitrators. Within two months from the date on which either Contracting Party receives written notice of request for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. The two arbitrators shall, within a further period of two months, together select a third arbitrator who is a national of a Third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

(4) If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrators who has or have not yet been appointed. If the President of the Court is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall determine its own procedure. The tribunal shall reach its decision in accordance with the provisions of this Agreement and the principles of international law recognised by both Contracting Parties.

(6) The tribunal shall reach its decision by a majority of votes. The decision shall be final and binding on both Contracting Parties. The tribunal shall, upon the request of either Contracting Party, explain the reasons for 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 the tribunal shall be borne in equal parts by the Contracting Parties.

## **Article 9. Settlement of Investment Disputes**

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the investor and the other Contracting Party.

(2) If any dispute referred to in paragraph 1 of this Article cannot be settled within six months following the date on which the written notification of the dispute has been received by one party from the other party to the dispute, the investor shall have the right to choose to submit the dispute for resolution by international arbitration to one of the following fora:

(a) the International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965, or;

(b) an arbitral tribunal to be set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary-General of ICSID;

3. Provided that the Contracting Party may require the investor to exhaust

The local administrative review procedure before the submission of the dispute to international arbitration. The provision of this Paragraph shall not apply if the investor has resorted to the procedure specified in Paragraph 2 of this Article.

4. The arbitral tribunal referred to in Paragraph 2(b) of this Article shall, with respect to the procedure, follow the Arbitration Rules of UNCITRAL.

5. Any arbitration under Paragraph 4 shall be held in a State that is a party to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. The arbitral tribunal shall decide the issues in dispute in accordance with the provisions of this Agreement, the law of the Contracting Party accepting the investment and applicable rules of international law.

7. Any arbitral awards rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the

enforcement of such award.

8. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason that indemnification or other compensation for all or part of the alleged damages has received or will be received pursuant to an insurance or guarantee contract, but the Contracting Party may require written consent that the insurer or guarantor who has paid or will pay the compensation to the investor agrees the investor to exercise the right of claim for compensation under the procedure specified by provisions of this Article. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

9. Each Contracting Party shall grant investors of the other Contracting Party the right of access to its courts competent for exercising adjudicatory authority in any dispute.

## **Article 10. Application of other Rides**

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

## **Article 11. Application of Agreement**

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. Meetings**

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 information about legal matters and investment Opportunities;
- (c) resolving disputes arising out of investments;
- (d) forwarding proposals on promotion of investment;
- (e) studying other issues in connection with investments.

Where either Contracting Party requests consultation on any matters of paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Bridgetown.

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

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 have been fulfilled, and shall 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 specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period. Either Contracting Party may at any time thereafter terminate this Agreement by giving at least one years 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 Articles 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorised representatives of their respective Governments have signed this Agreement.

Done in duplicate at Bridgetown on the 20th day of July, 1998 in the English and Chinese languages, both texts being equally authentic.

Qian Qichen

Vice-Premier of the State Council

For the Government of Barbados

For the Government of The Peoplee Republic of China