

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF GUYANA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the people's Republic of China and the Government of the Republic of Guyana, hereinafter referred to as "the contracting parties"

Desiring to intensify economic cooperation between both States on the basis of equality and mutual benefits;

Recognizing that the reciprocal encouragement, promotion and protection of investments will be conducive to stimulating the business initiatives of investors and the economic development of both States;

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

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Respecting the sovereignty and laws of the Contracting Party within whose jurisdiction the investment falls;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "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 as well as any other property rights such as mortgages, liens and pledges;
- (b) Shares, stock, debentures and any other form of participation in a company;
- (c) Claims to money, or to any performance under contract having an economic value associated with an investment;
- (d) Intellectual property rights, including copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;
- (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 shall not affect the character of the assets as investments, provided that such change is done in conformity with laws and regulations of the Contracting Party in which the assets are invested.

2. "investors" means:

- (a) Natural persons who have nationality 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 which have their seats in that Contracting party.

3. "nationals" means those persons referred to in paragraph 2 (a) above.

4. "returns" means the amounts yielded from an investment and in particular, though not exclusively, includes profit,

interests, capital gains, dividends, royalties and fees.

5. "territory" means:

The territory of the people's Republic of China or the territory of Cooperative Republic of Guyana, respectively, as well as those maritime areas including the seabed and subsoil, adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources of such areas.

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

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments of the investors of each Contracting party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting party.
3. Without prejudice to its laws and regulations, neither Contracting party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by the investors of the other Contracting party.
4. Each Contracting Party shall issue visas and work permits in accordance with its own laws and regulations to nationals of the other Contracting Party engaging in activities associated with investments made in its territory. Each Contracting Party shall encourage its investors to employ their best endeavours to facilitate the training of local personnel and the transfer of skills.

## **Article 3. Treatment of Investments**

1. For the purposes of this Article, "activities associated with the investments," means the operation, management, maintenance, use, enjoyment or disposal of those investments by the investor.
2. Without prejudice to its laws and regulations, each Contracting party shall accord to investments or returns and activities associated party, treatment not less favorable than that accorded to the investments, returns and associated activities of its own investors.
3. Neither Contracting Party shall subject investments or returns and activities associated with the investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments or returns and associated activities of investors of any third State.
4. The treatment granted under this Article shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership in, or association with, a customs or economic union, a common market or a free trade area.
5. The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to investors of third States by virtue of a double taxation agreement or other international agreement regarding matters of taxation.
6. The provisions of this Article shall not prevent either Contracting Party from granting special incentives only to its own nationals and companies in accordance with its laws and regulations in order to stimulate the creation or growth of local industries, provided that such incentives do not impair the investments or the activities in connection with an investment, of nationals and companies of the other Contracting party.

## **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, except:
  - (a) For the public purpose; and
  - (b) Under domestic law; and
  - (c) Without discrimination and
  - (d) Against compensation.

2. The compensation mentioned in paragraph 1 of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or before the impending expropriation becomes public knowledge, whichever is the earlier. The value shall be determined in accordance with the generally recognized principles of valuation as if the investments were to be sold as an ongoing concern on the open market disregarding the question of expropriation. The compensation shall include interest at the average commercial rate from the date of expropriation until the date of payment. The compensation shall be made without delay, be effectively realizable and be freely transferable.

3. The investor affected 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 this Article.

## **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 or other armed conflict, a state of national emergency, revolt, insurrection or riot or other similar event in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

## **Article 6. Transfers**

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

- (a) Profits, dividends, interest and other legitimate income;
- (b) Proceeds obtained from the total or partial sale liquidation of investments
- (c) Payments pursuant to loans in connection with investments;
- (d) Royalties and fees in relation to the matters in paragraph 1 (d) of Article 1; paragraph 1 (d) of Article 1;
- (e) Earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in the territory of the former Contracting Party;
- (f) Compensation provided for in Article 5; Article 5;
- (g) Payments of technical assistance or technical service fee or management fee;
- (h) Capital and additional sums necessary for the maintenance and development of the investments.

2. Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid in terms of Article 4 of this Agreement. Paragraph 1 of this Article shall affect the free transfer of compensation paid in terms of Article 4 of this Agreement.

3. Transfers shall be made in a freely convertible currency and at the applicable prevailing market rate of exchange in the territory of the Contracting Party accepting the investment and on the date of transfer subject to any withholding tax and other taxes unless otherwise agreed at the time of an individual investment.

## **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 and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right 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, if possible, be settled by consultation through diplomatic channels.

2. If the dispute has not been settled within a period of six months from the date on which either Contracting Party raised the matter, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.
3. Such an Arbitral Tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State having diplomatic relations with both contracting parties, as the chairman to be appointed by the two contracting parties, Such members shall be appointed within two months, and such chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an Arbitral Tribunal.
4. If within the periods specified in paragraph 3 above the necessary appointments have not been made, either Contracting Party shall, in the absence of any other arrangement, 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 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, the member of the court 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 the necessary appointments.
5. The Arbitral Tribunal shall determine its own procedure. The Arbitral Tribunal shall reach its award 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, and this award shall be final and binding on both contracting parties. The Arbitral Tribunal shall, upon the request of either Contracting Party, explain the reasons for its award.
7. Each Contracting Party shall bear the cost of its own member of the Arbitral Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal party by the contracting parties. The Arbitral Tribunal may, however, in its decision that a higher proportion of costs shall be borne by one of the two Contracting Parties

## **Article 9. Settlement of Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. For purposes of this Agreement, an "investment dispute" is a dispute between a Contracting Party and an investor of the other Contracting Party, concerning an obligation of the former under this Agreement in relation to an investment of the latter.
2. In the event of an investment dispute, the parties to the investment dispute should initially seek an amicable resolution through consultation and negotiation.
3. 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 to the Contracting Party accepting the investment.
4. If the investment dispute cannot be settled amicably within six months from the date of written notification of a claim, the investor that is a party to an investment dispute may submit the investment dispute for resolution under one of the following alternatives:
  - (a) . The International Centre for the Settlement of Investment Disputes (ICSID) having regard to the provisions, where applicable, of the convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D. C on 18th March 1965; or convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D. C on 18th March 1965; or
  - (b) . an ad hoc arbitral tribunal to be appointed by a special agreement of the parties to the investment dispute;

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 to the aforementioned arbitration procedure,

However, if the investor concerned has resorted to the procedure specified in paragraph 3 of this Article the provisions of this paragraph shall not apply.

5. Without prejudice to paragraph 4 of this Article, the ad hoc Tribunal referred to in paragraph 4 (b) shall be constituted for each individual case in the following way: each party to the dispute shall appoint an 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 and the Chairman within four months of the written notice requesting arbitration by either party to the dispute to the other.

6. If within the period specified in Paragraph 5 above, the Tribunal has not yet been constituted, either party to the dispute may invite the Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments. Paragraph 5 above, the Tribunal has not yet been constituted, either party to the dispute may invite the Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments.

7. The ad hoc 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 Centre for the Settlement of Investment Disputes.

8. The Tribunal referred to in Paragraph 4 (a) and (b) above of this Article shall reach its award by a majority of votes. Such award shall be final and binding upon both Parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award. Paragraph 4 (a) and (b) above of this Article shall reach its award by a majority of votes. Such award shall be final and binding upon both Parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

9. The tribunal referred to in Paragraphs 4 (a), (b) of this Article shall adjudicate in accordance with 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 applicable principles of international law. Paragraphs 4 (a), (b) of this Article shall adjudicate in accordance with 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 applicable principles of international law.

10. 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 the 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**

1. If the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than in provided for by the present Agreement. such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

2. Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards their investments.

3. Each investor shall observe the municipal and domestic laws, including criminal, immigration and taxation laws and other domestic legislation of the Contracting Party receiving the investment.

## **Article 11. Application**

This Agreement shall apply to all 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 but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

## **Article 12. Relations between Contracting Parties**

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations 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 and proposals for amendment of this Agreement;

(b) Exchanging legal information and investment opportunities;

(c) Forwarding proposals on promotion of investments;

(d) Studying other issues in connection with investments.

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

## **Article 14. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify the other in writing of the completion of the domestic legal procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date, on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

3. With respect to investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination.

## **Article 15. Amendment**

Any provision of this Agreement may be amended by mutual agreement between the Contracting Parties. An Exchange of Diplomatic Notes shall confirm any such amendment.

Done in duplicate at -----on the ----- day of ----- in the year ----- in the Chinese and English languages, both texts being equally authoritative.

For the Government of the Republic of Guyana

For the Government of the People's Republic of China