

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

The Government of the People's Republic of China and the Government of the Republic of Uganda hereinafter referred to as the Contracting Parties, Desiring to strengthen their economic cooperation by creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party; Recognising that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of business initiative and will increase prosperity of both Contracting States; Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two Contracting States 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 property, such as goods, rights and interests of whatever nature, and in particularly though not exclusively, includes:

(a) Tangible, intangible, movable and immovable properly as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights;

(b) Shares, debentures, stock and any other kind of participation in companies;

(c) Claims to money or to any other performance having an economic value associated with an investment;

(d) Intellectual and industrial property rights such as copyrights, patents, trademarks, industrial models and mockups, technical processes, know-how, trade names and goodwill, and any other similar rights;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources. Any change in the form in which properties are invested does not affect their character as investments provided that such change is 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) Natural persons who have nationality of either Contracting Party in accordance with the laws of that Contracting Party;

(b) Legal entities, including company, association, partnership and other organization, incorporated or constituted under the laws and regulations of either Contracting Party and have their headquarters in that Contracting Party.

3. The term "return" means the amounts yielded from investments, including profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

4. For the purposes of this Agreement, the term "territory" means respectively: -for the People's Republic of China, the territory of the People's Republic of China, including the territorial sea and air space above it, as well as any area beyond its territorial sea within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with Chinese Law and international law; -for Uganda, the Republic of Uganda.

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

1. Each Contracting Party shall encourage and promote investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. The investments made by investors of one contracting party shall enjoy full and complete protection and safety in the territory of the other Contracting Party.
3. Without prejudice to its laws and regulations, neither Contracting Party shall take any discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.
4. Subject to its laws and regulations, one Contracting Party shall provide assistance in and facilities for obtaining visas and working permit to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

### **Article 3. Treatment of Investment**

1. Investments of investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.
3. Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third State.
4. This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third 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.
5. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by the Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

### **Article 4. Expropriation**

1. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of investors of the other Contracting Party of their investments in territory, except for the public interest, without discrimination and against compensation.
2. Any measures of dispossession which might be taken shall give rise to prompt compensation, the amount of which shall be equivalent to the real value of the investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier.
3. The said compensation shall be set not later than the date of dispossession. 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.

### **Article 5.**

Indemnification 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, which is no less favorable than that granted to its own nationals or companies or to those of the most favored nation.

### **Article 6.**

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,

(b) That the former Contracting Party or to 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 7. Transfers**

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

- (a) Profits, dividends, interests and other legitimate income;
- (b) Proceeds obtained from the total or partial sale or liquidation of investments;
- (c) Payments pursuant to a loan agreement in connection with investments;
- (d) Royalties in relation to the matters in Paragraph 1 (d) of Article 1; Paragraph 1 (d) of Article 1;
- (e) Payments of technical assistance or technical service fee, management fee;
- (f) Payments in connection with contracting projects;
- (g) Earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2. Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement. Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement.

3. The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

4. In case of a serious balance of payments difficulties and external financial difficulties or the threat thereof, each contracting party may temporarily restrict transfers, provided that this restriction: i) shall be promptly notified to the other party; ii) shall be consistent with the articles of agreement with the International Monetary Fund; iii) shall be within an agreed period; iv) would be imposed in an equitable, non discriminatory and in good faith basis.

5. A Contracting Party may require that, prior to the transfer of payments, formalities arising from the relevant laws and regulations are fulfilled by the investors, provided that those shall not be used to frustrate the purpose of paragraph 1 of this article. paragraph 1 of this article.

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

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

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;
- (b) To International Center 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 concerned 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. 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 concerned 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 principles of international law.

4. The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award. 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 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 9. Settlement of Disputes between Contracting Party**

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels within three months.

2. In case of failure of a settlement through diplomatic channels within three months, the dispute may be submitted to an ad hoc joint committee consisting of the representatives of the two Parties or to ad hoc arbitration.

3. The Contracting Parties may set up such joint committee comprising relevant experts to resolve the dispute. The procedures of the joint committee shall be decided by both parties to the dispute.

4. If the joint committee cannot settle the dispute within six months, the party to the dispute is entitled to submit the dispute to an ad hoc arbitration tribunal. The arbitration tribunal shall be set up as follows for each individual case: Each Contracting Party shall appoint one arbitrator within a period of two months from the date on which one Contracting Party has informed the other Party of its intention to submit the dispute to arbitration. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal. If these time limits have not been complied with either Contracting Party shall request the President of the International Court of Justice to make the necessary appointment(s). If the President of the International Court of Justice is a national of either Contracting Party or of a State with which one of the Contracting Parties has no diplomatic relations or if, for any other reason, he cannot exercise this function, the Vice-President of the International Court of Justice shall be requested to make the appointment(s).

5. The court thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of the votes; they shall be final and binding on the Contracting Parties.

6. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

## **Article 10.**

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 11. Special Agreements**

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement and by those of the specific agreement.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-à-vis investors of the other Contracting Party shall be observed.

## **Article 12.**

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

## **Article 13.**

Governing law All investments shall, subject to this Agreement, be governed by law in force in the territory of the

Contracting Party in which such investments are made.

## **Article 14. Consultations**

1. 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 legal information and investment opportunities;
- (c) Resolving disputes arising out of investments;
- (d) Forwarding proposals on promotion of investment;
- (e) Studying other issues in connection with investment.

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

## **Article 15.**

Amendments The terms of this Agreement may be amended by mutual agreement of both Contracting Parties and such amendments shall be effected by exchange of notes between them through diplomatic channels.

## **Article 16. Entry Into Force and Duration**

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 therefore have been fulfilled and remain in force for a period of ten years.

2. This Agreement shall continue to be in force unless if either Contracting Party has fails to given a written notice to the other Contracting Party to terminate this Agreement one year before the expiration of the initial ten year period specified in Paragraph 1 of this Article or at any time thereafter. Paragraph 1 of this Article 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 to 15 shall continue to be effective for a further period of ten years from such date of termination.

In Witness Whereof the undersigned, duly authorized thereto by respective Governments, have signed this Agreement. Done in duplicate in Beijing on May 27, 2004, in the 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 Uganda