Agreement between the Government of the People's Republic of China and the Government of the Republic of Zambia on Encouragement and Reciprocal Protection of Investments

The Government of the People's Republic of China and the Government of the republic of Zambia (hereinafter referred to as the Contracting Parties),

Intending to create favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conductive to stimulating business initiative of the investors will increase prosperity in both States;

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

Have agreed as follows:

Article 1.

For the purpose 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, immovable property and other property rights such as mortgages and pledges;

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

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

(d) Intellectual property rights, in particular copy-rights, patents, utility-model patents, registered designs, trademarks, trade names, trade and business secrets, technical processes, know-how and goodwill;

(e) Concessions conferred by law, including concessions to search for or exploit natural resources.

2. The term "investors" means:

(i) Natural person deriving his/her status as a national of a Contracting Party from the law of that Contracting Party;

(ii) Company, Corporation, firm or association incorporated or constituted in accordance with the law of that Contacting Party and having its principal place of business in that Contracting Party.

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

Article 2.

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

2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa 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 according to its laws and regulations.

Article 3.

1. Investments and activities associated with investment 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 favorable than that accorded to investments and activities associated with such investments of investors of a third State.paragraph 1 of this Article shall not be less favorable 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 paragraphs 1 and 2 of this Article shall not include any 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.paragraphs 1 and 2 of this Article shall not include any 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.

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except:

(a) For purpose of public interest, under domestic law;

(b) On a non-discriminatory basis and;

(c) Against prompt compensation.

2. Such compensation shall be at least equal to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, and be effectively realizable.

Article 5.

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

Article 6.

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

(a) Profits, dividends, interests and other legitimate income;

(b) Amounts from total or partial liquidation of investment;

(c) Payment made pursuant to a loan agreement in connection with investment;

(d) Royalties in paragraph 1 (d) of Article 1, payment made for technical assistance or technical services fees, management fees, provided that payment of relevant tax is made;paragraph 1 (d) of Article 1, payment made for technical assistance or technical services fees, management fees, provided that payment of relevant tax is made;

(e) Payment in connection with projects on contract;

(f) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of one Contracting Party.

2. 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.

If a Contracting Party or its Agency makes payments to an investor under a guarantee it has granted to 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 recognize 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 or claim of the said investor.

Article 8.

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 diplomatic channels.

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

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further 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 arbitrator(s) who has or have not yet been appointed. If the President 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 appointment (s).

5. The arbitral tribunal shall determine its own procedure. The 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 tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral shall, upon the request of either Contracting party, explain the reasons of its award.

7. Each Contracting Party shall bear the cost 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.

1. Any 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, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provision of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in the Paragraph 2 of this Article.Paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provision of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in the Paragraph 2 of this Article.

4. Such an arbitral tribunal 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 the two Contracting parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the International Centre for Settlement of Investment Disputes to make the necessary appointments.

5. The 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 Center for Settlement of Investment Disputes.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

7. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

8. 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.

Article 10.

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

Article 11.

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.

1. The representatives of the two 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 dispute arising out of investments;

d) Forwarding proposals on promotion of investment;

e) Studying other issues in connection with investments.

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 consultation be held alternately in Beijing and Lusaka.Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Lusaka.

Article 13.

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 five years.

2. This Agreement shall continue in force for a further period of five years subject to paragraph 3 of this article, 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.paragraph 3 of this article, 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 five years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investment made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

Done in duplicate at Lusaka on June 21, 1996 in the Chinese and English languages, both texts being equally authentic.

Representative the Government of the People's Republic of China

Liu Shan (signed)

Representative of the Government of the Republic of Zambia

In Panza (signed)