

# Agreement between the Government of the People's Republic of China and the Government of the Republic of Vanuatu on the Promotion and Protection of Investment

The Government of the People's Republic of China and the Government of the Republic of Vanuatu, hereinafter referred to as "the Contracting Parties,

Willing to create favorable conditions for investors of one Contracting Party to invest in the territory of the other Contracting Party,

Recognizing that mutual encouragement, promotion and protection of investment will help to stimulate the enthusiasm of investors to operate and enhance the prosperity of the two countries,

On the basis of the principle of equality and mutual benefit, to strengthen cooperation between the two countries,

Agree as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any property invested by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, including but not limited to:

(A) movable property, immovable property and other property rights and similar rights, such as mortgage or pledge;

(B) shares, bonds, stocks or other forms of participation in a company;

(C) the right to claim money or any other investment-related claims that are of economic value;

(D) intellectual property rights, in particular copyright, patents, trademarks, trade names, processes, know-how and goodwill;

(E) Commercial concessions granted under the law or permitted by contract, including concessions for exploration, farming, refining or development of natural resources.

Any change in the form of and investment that conforms to the laws and regulations of the Contracting Party in which the investment is made does not affect its nature as an investment.

2. The term "investor" means:

(A) a natural person having the nationality of that Contracting Party under the law of either Contracting Party;

(B) legal entities, including companies, associations, partnerships and other persons established or formed under the laws of either Contracting Party in the territory of that Contracting Party.

3. The term "proceeds" means money generated from investments, including profits, dividends, interest, capital gains, royalties, fees and other legal income.

## Article 2. Promotion and Protection of Investment

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

2. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall be subject to

continuous protection and security in accordance with the laws and regulations of the other Contracting Party.

3. Without prejudice to its laws and regulations, a Contracting Party shall not take any unreasonable or discriminatory measures on the management, maintenance, use, enjoyment and disposition of investments of investors of the other Contracting Party in its territory.

4. Each Contracting Party shall, in accordance with its laws and regulations, provide assistance and facilities for the obtaining of visas and work permits for the nationals of the other Contracting Party engaged in investment-related activities in its territory.

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

1. In accordance with the law of the Contracting Parties, investments by Contracting Parties shall always enjoy fair and equitable treatment in investments in the territory of the other Contracting Party.

2. Without prejudice to its laws and regulations, each Contracting Party shall give investors of the other Contracting Party an investment in its territory and investment-related activities not less favorable than the investment and investment-related activities given to its investors.

3. The treatment of investment and investment-related activities of the other Contracting Party by an investor of the other Contracting Party shall not be less favorable than that accorded to the investment of any third country investor and investment-related activities.

4. The provisions of paragraph 3 of this Article shall not be construed as an obligation for a Contracting Party to give to the other Contracting Party the treatment, preference or privilege arising from the following reasons:

(A) customs unions, free trade zones, economic alliances and any international agreements that produce such unions or similar institutions;

(B) any international agreement or arrangement in whole or in relation to taxation;

(C) any arrangement to facilitate border trade in border areas.

### **Article 4. Expropriation**

1. No contracting party may expropriate, nationalize, or take other similar measures (hereinafter referred to as "expropriation") to the investments of investors of the other Contracting Party in its territory, unless all of the following conditions are met:

(A) for public interest;

(B) in accordance with domestic legal procedures;

(C) non-discriminatory;

(D) to give compensation.

2. The compensation referred to in paragraph 1 of this Article shall be equal to the value of the investment which is levied at an earlier hour before or after the collection is known to the public. The value should be determined on the basis of generally accepted valuation principles. Compensation shall be made in freely convertible currency. The compensation shall include interest at the normal commercial interest rate on the date of payment from the date of collection. The payment of compensation should not be delayed and should be effectively redeemed and freely transferred.

### **Article 5. Compensation for Damage and Loss**

If an investor's investment in the territory of the other Contracting Party suffers losses due to war, a national emergency, rebellion, riot, or other similar incidents that occurred in the territory of the other Contracting Party, the other Contracting Party shall grant him the restoration, compensation, indemnification or other measures taken that shall not be lower than those given to investors in their own country or any third country.

### **Article 6. Transfer**

1. Any Contracting Party shall, in accordance with its laws and regulations, ensure that the investor of the other Contracting

Party transfers the investment and proceeds in its territory, including:

(A) profits, dividends, interest and other legal income;

(B) all or part of the sale or liquidation of the proceeds of the investment;

(C) the repayment of the loan agreement relating to the investment;

(D) royalties or royalties relating to matters relating to matters in subparagraph (4) of Article 1 (1) of this Agreement;

(E) technical assistance or technical service fee, management fee;

(F) the payment of the contracted works;

(G) the income of the nationals of the other Contracting Party engaged in the investment-related work in the territory of the other Contracting Party.

2. The provisions of paragraph 1 of this Article shall not affect the free transfer of compensation obtained under article 4 of this Agreement.

3. The above transfer shall be made in freely convertible currency at the market exchange rate prevailing on the date of acceptance of the investment party.

## **Article 7. Subrogation**

1. If the Contracting Party or its designated institution pays an investor in respect of an investment in the territory of the other Contracting Party in accordance with a security or insurance contract for non-commercial risk, the other Contracting Party shall acknowledge that:

(A) the rights and claims of the investor are transferred to the Contracting Party or its designated body in accordance with the law or legal transaction of the former Contracting Party; and

(2) The predecessor Party or its designated institution shall act on behalf of the investor in the same manner as the investor, or enforce the investor's claim, and bear its investment-related obligations.

## **Article 8. Dispute Settlement between Contracting Parties**

1. Any dispute arising from the interpretation or application of this Agreement between the Contracting Parties shall be settled through consultation as far as possible through diplomatic channels.

2. If the dispute is not resolved within six months, the dispute shall be submitted to the arbitral tribunal for settlement at the request of either Contracting Party.

3. The arbitral tribunal shall consist of three arbitrators. Within two months from the date of receipt of the written arbitration request, the Contracting Parties shall each appoint an arbitrator.

The two arbitrators shall, within two months from the date of appointment by the former two arbitrators, jointly select a third national who has diplomatic relations with the Contracting Parties as the presiding arbitrator.

4. If the arbitral tribunal fails to form within four months from the date of the filing of the written arbitration application, there shall be no other agreement between the Contracting Parties and either Contracting Party may bring the necessary appointment to the President of the International Court of Justice. If the President of the International Court of Justice is a national of either Contracting Party or is unable to perform such an appointment for any other reason, the Supreme Court of the International Court of Justice shall be required to perform such appointment if the head of any of the Contracting States of the International Court of Justice is not allowed to do so.

5. The arbitral tribunal shall, at its discretion, determine its procedure, and the arbitral tribunal shall render its decision in accordance with the principles of international law recognized in this Agreement and by both Contracting Parties.

6. The arbitral tribunal's decision shall be made by a majority of votes. The award is final and binding on both parties. The arbitral tribunal shall, at the request of either Contracting Party, interpret its decision.

7. The Contracting Parties shall bear the costs of their appointed arbitrators and their attendance at the arbitral proceedings. The corresponding costs of the presiding arbitrator and the arbitral tribunal shall be borne equally by both Contracting Parties.

## **Article 9. Dispute Settlement between Investors and Contracting Parties**

1. Any legal dispute between an investor of a Contracting Party and an investment between the other Contracting Party in respect of an investment in the territory of the other Contracting Party shall, as far as possible, be settled by negotiation by a negotiating party.
  2. If the dispute is not resolved through negotiation within six months from the date when the party to the dispute proposes a negotiated settlement, the dispute shall be submitted at the investor 's option:
    - (i) A court with jurisdiction over the dispute from the party that is a party to the dispute;
    - (ii) The International Center for Settlement of Investment Disputes, established by the Convention on the Settlement of Disputes between States and Other States, signed at Washington on 18 March 1965. Provided that the Party involved in the dispute may require the investor concerned to exhaust the domestic administrative reconsideration procedure under the Contracting Party's laws and regulations before submitting the International Center for Settlement of Investment Disputes.
- Once the investor has decided to refer the dispute to the competent court of the relevant Party or to the International Center for Settlement of Investment Disputes, the choice of one of the two procedures should be final.
3. The arbitral award shall be made on the basis of the law of the parties to the dispute, including its conflict of laws rules, the provisions of this Agreement and the generally accepted principles of international law.
  4. The award is final, binding on both sides of the dispute. The Contracting Parties shall bear the obligation to enforce the award.

## **Article 10. Other Obligations**

1. If the legislation of one Contracting Party or the existing or subsequent international obligations between the Contracting Parties make the investment of the investors of the other Contracting Party enjoy a more preferential treatment status than that provided for in this Agreement, the status shall not be affected by this Agreement.
2. Each Contracting Party shall abide by its commitments with respect to investments made by investors of the other Contracting Party.

## **Article 11. Scope of Application**

1. This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party upon its entry into force.

## **Article 12. Consultation**

1. The representatives of the contracting parties shall hold talks from time to time for the following purposes:
  - (A) Review the implementation of this agreement;
  - (B) Exchange of legal information and investment opportunities;
  - (C) Settling disputes arising from investment;
  - (D) Put forward suggestions to promote investment;
  - (E) To study other matters related to investment.
2. If one of the Contracting Parties proposes to conduct consultations on any of the matters listed in paragraph 1 of this article, the other Contracting Party shall respond in a timely manner, and the consultations will take place in turn in Beijing and Port Vila.

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

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have completed the necessary legal proceedings in their respective countries and notified each other in writing.
2. If either Contracting Party fails to notify the other Contracting Party of the termination of this Agreement in writing one

year before or at the end of the first decade of validity of this Agreement, this Agreement will continue to be valid.

3. For investments made before the date of termination of this Agreement, the provisions of Articles 1 to 12 of this Agreement shall continue to apply for ten years from the date of termination of this Agreement.

4. This Agreement may be amended by written agreement between the contracting parties. Any modification shall take effect in accordance with the same procedures as those required for the entry into force of this Agreement.

This Agreement was signed in Nadi, Fiji, on 5 April 2006, in duplicate in the Chinese and English languages, with the same effect. In case of ambiguity, the English version shall prevail.

For the People 's Republic of China

Bo Xilai

For the Government of the Republic of Vanuatu

James Bligh