Agreement between the Government of the Republic of China and the Government of the Republic of the Marshall Islands on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of China and the Government of the Republic of the Marshall Islands, hereinafter "the Parties";

Desiring to create favorable conditions for greater economic cooperation and investments on the basis of the principles of equality and mutual benefit; and

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "investment"' means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company and any other form of interest in a company;

(iii) Claims to money, or to any performance under contract having an economic value;

(iv) Intellectual and industrial property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes and know-how, goodwill;

(v) Rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

The said term "investment" shall refer to those investments admitted in the territories of the Parties in accordance with relevant laws, regulations and administrative practices.

Any change in the form in which assets are invested does not affect their character as investments.

(2) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit interest capital gains, dividends, royalties and fees;

(3) "investor" means any natural person who is a national of either Party or a juristic person such as a corporation, firm or associations incorporated or established under the law in force of either Party.

(4) "territory" means the territory, including the territorial seas and any maritime areas situated beyond the territorial seas, of each Party over which its authorities exercise sovereign right of jurisdiction according to relevant laws.

Article 2. Promotion of Investments

(1) Each Party shall, subject to its laws and regulations in the field of foreign investment, encourage investments in its territory by investors of the other Party, and, subject to its right to exercise powers conferred by its laws, shall admit such investment.

(2) Each Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with. such

investments and with the implementation of licensing agreements and contracts for technical, commercial or administrative assistance.

Article 3. Treatment of Investments

(1) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither Party shall in any way impair, by adopting unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

(2) Each Party shall in its territory accord investments and re- turns of investors of the other Party treatment not less favorable than treatment, which it accords to investments and returns of investors of any third State.

(3) The provisions of paragraph (2) shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either of the Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) If either Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly nonprofit activities, that Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Party.

Article 4. Compensation for Losses

(1) Investors of either Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection pr riot in the territory of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter party accords to its nationals or investors of any third State.

(2) Without prejudice to paragraph (1) of this Article, investors of either Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Party,

(b) Destruction of their property by the forces or authorities of the latter Party, which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation.

Article 5. Expropriation

(1) Investments of investors of either Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except in the public interest, under due process of law, on a nondiscriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, and be effectively realizable.

(2) The investor affected thereby shall have a right, under the law of either Party making the expropriation, to prompt review, by judicial or other independent authorities of that Party in accordance with the procedures established by the law of that 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 6. Transfers of Investments and Returns

Each Party shall allow in accordance with its laws and regulations, investors of the other Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to Articles 4 and 5. Unless otherwise

agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer subject to the exchange regulations in force, transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer.

Article 7. Settlement of Disputes between an Investor and a Party

(1) Disputes between an investor of either Party and the other Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the party concerned in the dispute may agree to refer the dispute either to:

(a) The International Court of Arbitration of the International Chamber of Commerce in accordance with its Arbitration Rules; or

(b) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law. If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of the investor concerned be submitted to arbitration at the International Court of Arbitration of the International Chamber of Commerce. The Parties to the dispute may agree in writing to modify the rules applicable to the arbitration, The award shall be final and binding on the parties to the dispute. Each Party under takes to enforce the awards.

Article 8. Disputes between the Parties

(1) Disputes between the Parties concerning the interpretation or application of this Agreement shall, if possible, be amicably settled through consultation.

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the Chairman of the International Court of Arbitration of the International Chamber of Commerce to make any necessary appointments. If the Chairman is a national of either Party or if be is otherwise prevented from discharging the said function, the Vice-Chairman shall be invited to make the necessary appointments. If the Vice-Chairman is a national of either Party or if he too is prevented from discharging the said function, the Member of the International Court of Arbitration of the International Chamber of Commerce next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its award by a majority of votes. Each Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The tribunal may, however, in its award direct that a higher proportion of this costs shall be borne by one of the two Parties. The tribunal shall determine its own procedure. This award shall be final and binding on the Parties.

Article 9. Subrogation

If a Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall recognize that the former Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Original investor.

Article 10. Application of other Rules

(1) If the provisions of the law of either Patty or obligations under international law existing at present or established

hereafter between the Parties in addition to the rules contained in this Agreement, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favorable than those which provided hereunder Agreement, such rules shall prevail.

(2) Each Party shall observe any obligation it may have entered into with regard to investments of investors of the other Party.

Article 11. Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute, which arose before entry into force of this Agreement.

Article 12. Final Clauses

(1) This Agreement shall enter into farce on the date when the Parties, by an exchange of notes through diplomatic channel, notify each other that the respective domestic legal processes required for implementation of this Agreement have been completed.

(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 Party shall have given written notice of termination to the other.

(3) In respect of investment made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 11 shall remain in force with respect to such investment for a further period of twenty years from that day .

IN WITNESS WHEREOF the undersigned, being duly authorized there to, have signed this Agreement.

Done at Majuro in duplicate in the English language on the first day of the fifth month, One Thousand Nine Hundred and Ninety Nine.

For the Government of the Republic of China

Jason C. Hu

Minister of Foreign Affairs

Republic of China

For the Government of the Republic of the Marshall Islands

Phillip Muller

Minister of Foreign Affairs and Trade

Republic of the Marshall Islands