

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF _____ ON THE PROMOTION AND PROTECTION OF INVESTMENTS

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

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

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

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

Desiring to establish a framework of rules conducive to increasing investment flows between the Parties and to ensure the protection and security of investments of the other Party within each Party's territory;

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognized labour rights;

Emphasising the importance of corporate social responsibility;

Have agreed as follows:

Section I. Definitions and Application

Article 1. Definitions

For the purpose of this Agreement, the term

1. "Investor of a Contracting Party" means:

(a) a natural person having the nationality of, or permanent residence in, a Contracting Party in accordance with its applicable law [provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality]; or

(b) a legal entity constituted or otherwise organized under the law of a Contracting Party, and engaged in substantive business operations in the territory of that Party;

having an investment in the territory of the other Contracting Party (1);

(1) Given China has not yet enacted a law on the treatment of permanent residents of foreign states, it may be helpful to also add the following qualification: Until such time as China enacts its domestic law on the treatment of permanent residents of foreign countries, this Agreement does not impose obligations on a Party with respect to the permanent residents of the other Party except for the obligations in Articles [. . .].

2. "legal entity" means any entity constituted or organized under the applicable law, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

3. "investment" means any assets owned or controlled, directly or indirectly, by investors of a Contracting Party in accordance with the laws and regulations of the other Contracting Party, including but not limited to:

- i. a legal entity;
- ii. shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- iii. bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing;
- v. contracts;
- vi. claims to money and claims to performances
- vii. intellectual property rights;
- viii. rights conferred pursuant to law or contract such as concessions, licenses, authorisations, and permits;
- ix. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges

In order to qualify as an investment under this Agreement, an asset must have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk,

Any change in the form in which assets 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.

4. "returns" means the amounts yielded from investments, including profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

5. "territory" means:

(a) in respect of 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 explorations and exploitations of resources of the seabed and its subsoil and superjacent water resources in accordance with Chinese law and international law; (2)

(2) An explanatory note may be added here as follows: Authorized by the Central government of the People's Republic of China, the governments of Hong Kong and Macao Special Administrative Regions can separately negotiate and sign the Agreement on the Promotion and Reciprocal Protection of Investments with the government of United Mexican States by themselves. If the Parties do not intend the BIT to apply to Hong Kong and Macau SARs, they may follow the Russia BIT and adopt the following language: 1. Unless otherwise agreed by both Contracting Parties, the Agreement does not apply to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of People's Republic of China,

(b) in respect of [Country,] [].

Until such time as China enacts its domestic law on the treatment of permanent residents of foreign countries, this Agreement does not impose obligations on a Party with respect to the permanent residents of the other Party except for the obligations in Articles [...]

Article 2. Scope of Application

1. This Agreement applies to measures adopted or maintained by a Party, after the entry into force of this Agreement, relating to investors of the other Party or their investments. The Section III [Dispute Settlement] does not apply to disputes arising out of events that have occurred before the entry into force of this Agreement.

2. This Agreement applies to investments made prior to or after its entry into force in accordance with the laws and regulations of the Contracting Party concerned.

3. This Agreement shall apply to the territory of a Party, as defined in Article 1 Paragraph 5.

Section II. Standards of Treatment

Article 3. General Standard of Treatment

1. Each Contracting Party shall at all times accord to investments of investors of the other Contracting Party treatment in accordance with generally accepted principles of international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, the concepts of "fair and equitable treatment" and full protection and security" do not require treatment in addition to or beyond accepted principle of international law. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 4. Most Favoured Nation Treatment

1. Each Contracting Party shall accord to investors of the other Contracting Party and their investment, treatment no less favourable than that it accords, in like circumstances, to investors of any third State and their investments with respect to the admission, expansion, operation, management, maintenance, use, enjoyment or disposal of investments. (3)

(3) China will seek a grandfather provision in a Protocol or Annex permitting it to continue to maintain any non-conforming measures, for example the provision in the Protocol to the Germany BIT which provides: With regard to the *People's Republic of China* paragraph 3 of Article 2 and paragraph 2 of Article 3 do not apply to: (a) any *existing* non-conforming measures maintained in its territory; (b) the *continuation* of any such non-conforming measure; (c) any *amendment* to any such non-conforming measure *to the extent that the amendment does not increase the non-conformity of these measures*. The People's Republic of China will take all appropriate steps in order to progressively remove the non-conforming measures (emphasis added). See also Germany BIT 2003, Protocol, Ad Article 2 and 3.

2. Treatment referred to in paragraph [1] shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(a) any customs union, free trade zone, economic union and any international agreement resulting in such unions, or similar institutions;

(b) any arrangements for facilitating small scale frontier trade in boarder areas.

3. For greater certainty, treatment referred to in paragraph [1] does not encompass dispute resolution mechanisms provided for in this Agreement or other international agreements.

Article 5. National Treatment

1. Without prejudice to its laws and regulations at the time the investment is made, each Contracting Party shall accord to investors of the other Contracting Party and their investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.

2. National treatment also applies to admission of investments as set out in Annex [A].

Article 6. Admission of Investments

1. Subject to this Agreement and any other applicable treaty obligations, each Contracting Party shall admit of investments made by investors of the other Contracting Party pursuant to its applicable laws and regulations.

2. Subject to its laws and regulations, one Contracting Party shall provide assistance in and facilities for obtaining visas and working permits to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

Article 7. Expropriation

1. Neither Contracting Party may expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law; and

(d) on payment of compensation in accordance with paragraph 2 below.

2. Compensation shall:

(a) be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value because the intended expropriation had become publicly known earlier;

(b) include interest at a commercially reasonable rate, from the date of expropriation until the date of actual payment;

(c) be paid without delay; and

(d) be fully realizable and freely transferable.

3. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Article 8. Compensation for Losses

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 no less favorable than that accorded to the investors of its own or any third State, whichever is more favorable to the investor concerned.

Article 9. Transfer

1. Without prejudice to any applicable formalities pursuant to its laws and regulations, each contracting Party shall guarantee to an investor of the other Contracting Party that all payments related to an investment in its territory may be freely transferred into and out of its territory without delay. Such transfers shall include, but not be limited to:

(a) amounts necessary for establishing, maintaining, or expanding investment;

(b) profits, interests, dividends, capital gains, royalties and other fees in connection with intellectual and industrial property rights;

(c) payments made under a contract including those pursuant to a loan agreement;

(d) proceeds from the total or partial sale or liquidation of the investment;

(e) earnings and remuneration of nationals of the other Contracting Party who work in connection with an investment;

(f) any compensation owned to an investor by virtue of Article 7 and 8; and

(g) payments pursuant to the settlement of a dispute under Section III.

2. The formalities referred to in paragraph 1 above:

(a) shall in no case be more restrictive than those required at the time of entry into force of this Agreement;

(b) shall in no case impose new restrictions than those imposed at the time of entry into force of this Agreement; and

(c) shall not be used as a means of avoiding the Contracting Party's commitments and obligations under this Article.

3. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies as classified by the International Monetary Fund at the market exchange rate prevailing on the date of transfer unless otherwise provided in this Article.

4. A Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

- (c) criminal or administrative offenses;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. In case of a serious balance of payments difficulty or of a threat thereof, each Contracting Party may temporarily restrict transfers provided that such a Contracting Party implement measures or a programme in accordance with international standards. These restrictions should be imposed on an equitable, non-discriminatory and in good faith basis.

Article 10. Subrogation

If one Contracting Party or its designed 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 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 11. Non-Derogation

1. This Treaty shall not derogate from any of the following that entitle an investor of a Party or a covered investment to treatment more favourable than that accorded by this Agreement:

- (1) laws or regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;
- (2) international legal obligations of a Party; or
- (3) obligations assumed by a Party, including those contained in an investment authorization or an investment agreement.

2. For the purpose this Agreement:

(1) "investment authorization" means an authorization that the relevant foreign investment authority of a Party grants to a covered investment or an investor of the other Party.

(2) "investment agreement" means a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

- a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;
- b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or
- c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government.

Article 12. Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (1) to protect public morals or to maintain public order;
- (2) to protect human, animal or plant life or health;
- (3) to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(4) for the protection of national treasures of artistic, historic or archaeological value; or

(5) for the protection of the environment

2. Nothing in this Agreement shall be construed:

1) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

2) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

a) relating to investment in defence and security sector[s];

b) relating to fissionable and fusionable materials or the materials from which they are derived;

c) taken in time of war or other emergency in international relations; or

3) to prevent any Party from taking any action in pursuance of its obligations for the maintenance of international peace and security, including under the United Nations Charter.

3. The provisions of this Agreement shall not apply to a Party's laws and measures specifically designed to preserve and promote linguistic and cultural diversity, cultural and audiovisual policy, as well as rights and obligations of the Parties under international agreements and national laws and measures relating to copyright and related rights.

4. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, to ensure the integrity and stability of the financial system, or to enhance market competition, including ownership control and limitation.

Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

5. Taxation

a) Nothing in this Agreement shall affect the imposition, enforcement or collection of direct or indirect taxes Imposed by a Party.

b) Nothing in this Agreement shall create any right to any benefit under an agreement for the avoidance of double taxation concluded by a Party.

c) Any dispute as to whether paragraphs a) and b) apply, may only be brought before the Competent Tax Authorities of the Parties or the national courts or appeal organs of a Party, and shall not be covered by Section III [State-Investor Dispute Settlement] of this Agreement.

d) If the Competent Tax Authority of one of the Parties, after the procedure set forth in paragraph c), does not agree that paragraph a) above apply, but takes the position that the case should be considered under Article [Expropriation], then the dispute shall be covered by Section III [State-Investor Dispute Settlement] of this Agreement.

Article 13. Corporate Social Responsibility

The Parties agree to encourage investors to conduct their investment activities in a socially responsible manner, by complying with the OECD Guidelines for Multinational Enterprises and participating in the United Nations Global Compact

Section III. Settlement of Investor-State Disputes

Article 14. Application

This Section shall apply to disputes between a Contracting Party and an investor of the other Contracting Party arising from an alleged breach of an obligation set forth in Section II entailing loss or damage.

Article 15. Consultation and Notice of Intent

1. The disputing parties should first attempt to settle a claim through consultation or negotiation.

2. With a view to settling the claim amicably, the disputing investor shall deliver to the disputing Contracting Party written notice of its intention to submit a claim to arbitration at least six months before the claim is submitted. Such notice shall specify:

(a) the name and domicile of the disputing investor and, where a claim is made by an investor for loss or damage to an enterprise, the name and domicile of the enterprise;

(b) the provisions of Section II alleged to have been breached and other relevant provisions;

(c) the issues and the factual and legal basis of the claim; and

(d) the relief sought and [where possible] the approximate amount of damages claimed.

Article 16. Submission to Arbitration

1. Subject to Annex B, an investor of a Contracting Party may submit to arbitration a claim that the other Contracting Party has breached an obligation set forth in Section II, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. A disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitration rules, if the disputing parties so agree.

3. A disputing investor may submit a claim to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set forth in this Section; and

(b) the investor and, where the claim is for loss or damage to an interest of an enterprise of the other Contracting Party that is a legal person that the investor owns or controls, the enterprise waive their right to initiate or continue before any administrative tribunal or court under the laws of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of Section II, except for proceedings for injunctive, declaratory or other similar relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party.

4. The consent and waiver referred to in this Article shall be in writing, delivered to the disputing Contracting Party and included in the submission of a claim to arbitration.

5. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

6. Without prejudice to Article 12, a dispute may be submitted not later than three (3) years from the date that the investor first acquired or should have first acquired knowledge of the events which gave rise to the dispute. o

7. The Contracting Parties recognize that under this Article, minority non-controlling investors have standing to submit only a claim for direct loss or damage to their own legal interest as investors.

Article 17. Consent by Contracting Parties

1. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Section.

2. The consent under paragraph 1 above and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of Chapter I of the ICSID Convention (Jurisdiction of the Centre), the ICSID Additional Facility Rules and Article II of the New York Convention for written consent of the parties to the dispute.

Article 18. Constitution of the Arbitral Tribunal

1. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall be composed by three arbitrators. Each party to the dispute shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator who shall be the chairman of the arbitral tribunal.
2. The arbitrators referred to in Paragraph 1 above shall have experience in international law and investment matters.
3. If an arbitral tribunal has not been established within ninety (90) days from the date in which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of ICSID, upon request of any of the disputing parties, shall be asked to appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. Nevertheless, the Secretary-General of ICSID, when appointing the chairman, shall assure that he or she is a national of neither of the Contracting Parties.

Article 19. Consolidation

Where two or more investors notify an intention to submit claims to arbitration which have a question of law or fact in common and arise out of the same events or circumstances, the disputing parties shall consult with a view to harmonising the procedures to apply, where all disputing parties agree to the consolidation of the claims, including with respect to the forum chosen to hear the dispute. (4)

(4) The parties may wish to consider including more detailed provision if they have strong views on how such consolidation mechanism should work, following eg, the US Model BIT of 2004 and the NAFTA.

Article 20. Conduction of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the applicable arbitral rules, If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
- [2. The Tribunal shall have the authority to accept and consider written amicus curiae submissions from a person or entity that is not a disputing Party, provided that the Tribunal has determined that they are directly relevant to the factual and legal issues under consideration. The Tribunal shall ensure an opportunity for the parties to the dispute, and to the other Party, to submit comments on the written amicus curiae observations.]
3. In an arbitration under this Section, a disputing Contracting Party shall not assert as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.
4. An Arbitral Tribunal may recommend an interim measure of protection to preserve the rights of a disputing party, or to ensure that the arbitral tribunal's jurisdiction is made fully effective, including a recommendation to preserve evidence in the possession or control of a disputing party or to protect the arbitral tribunal's jurisdiction. An arbitral tribunal may not recommend attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 16.

Article 21. Applicable Law

1. A tribunal established in accordance with this Section shall decide the submitted issues in dispute in accordance with this Agreement and generally recognised principles of international law.
2. An interpretation jointly formulated and agreed upon by the Contracting Parties with regard to any provision of this Agreement shall be binding on any tribunal established under this Section.

Article 22. Awards and Enforcement

1. Unless the disputing parties agree otherwise, an award which provides that a Contracting Party has breached its obligations pursuant to this Agreement may only award, separately or in combination:
 - (a) monetary damages and any applicable interest; or
 - (b) restitution in kind, provided that the Contracting Party may pay pecuniary compensation in lieu of restitution,
2. Where a claim is submitted to arbitration for loss or damages to an enterprise:

- (a) an award of restitution in kind shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. Arbitral awards shall be final and binding, solely between the disputing parties and with respect to the particular case.
4. The arbitral award will be publicly accessible, unless the disputing parties agree otherwise.
5. A tribunal may not award punitive damages.
6. Each Contracting Party shall, within its territory, adopt all necessary measures for the effective enforcement of awards issued pursuant to this Article, and shall facilitate the enforcement of any award rendered within a proceeding in which it is a party.
7. A disputing party may not seek enforcement of a final award until:
- (a) in the case of a final award rendered under the ICSID Convention:
 - (i) one hundred and twenty (120) days have elapsed from the date in which the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other arbitration rules selected by the disputing parties:
 - (i) three (3) months have elapsed from the date in which the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

Section IV. State-State Dispute Settlement

Article 23. Application

1. This Section applies to the settlement of disputes between the Contracting Parties arising from the interpretation or application of the provisions of this Agreement.
2. A Contracting Party may not initiate proceedings in accordance with this Section with regard to a dispute concerning the violation of the rights of an investor, unless the other Contracting Party fails to abide by or comply with a final award rendered in a dispute that such investor may have submitted pursuant to Section III. In this case, an Arbitral Tribunal established in conformity with this Section may render, upon request of the Contracting Party whose investor was part in the dispute:
- (a) a statement that the failure to abide by or comply with the final award is inconsistent with the obligations set forth in this Agreement; and
 - (b) a recommendation that the other Contracting Party abide by or comply with the final award.

Article 24. Consultations and Negotiations

1. If a dispute arises between the Contracting Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations and negotiations.
2. In the event the dispute is not settled through the means mentioned above within six (6) months, from the date such negotiations or consultations were requested in writing, any Contracting Party may submit the dispute to an arbitral tribunal established in accordance with the provisions of this Section or, by agreement of both Contracting Parties, to any other international tribunal.

Article 25. Constitution of the Arbitral Tribunal

1. Arbitration proceedings shall initiate upon written notice delivered by one Contracting Party (the requesting Contracting Party) to the other Contracting Party (the respondent Contracting Party) through diplomatic channels. such notice shall contain a statement setting forth the legal and factual grounds of the claim, a summary of the development and results of the consultations and negotiations that took place pursuant to Article 24, the requesting Contracting Party's intention to initiate proceedings under this Section, and the name of the arbitrator appointed by such requesting Contracting Party.
2. Within thirty (30) days after the delivery of such notice, the respondent Contracting Party shall notify the requesting Contracting Party the name of its appointed arbitrator.
3. Within thirty (30) days following the date in which the second arbitrator was appointed, the arbitrators appointed by the Contracting Parties shall appoint, by mutual agreement, a third arbitrator, who shall be the presiding arbitrator upon approval of the Contracting, Parties. If the approval has not been rendered within thirty (30) days following the date in which the third arbitrator was appointed, paragraph 4 below shall apply.
4. If within the time limits provided for in paragraph 2 and 3 above, the required appointments approvals have not been given, either Contracting Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a citizen or a permanent resident of either Contracting Party, or he or she is otherwise unable to act, the Vice-President shall be invited to make the referred appointment(s). If the Vice-President is a citizen or a permanent resident of either Contracting Party, or he or she is otherwise unable to act, the member of the International Court of Justice next in seniority who is not a citizen nor a permanent resident of either Contracting Party, shall be invited to make the necessary appointment(s).
5. In case an arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as that prescribed for the appointment of the original arbitrator, and he or she shall have the same powers and duties that the original arbitrator had.

Article 26. Conduct of the Arbitration

1. Once convened by the presiding arbitrator, the arbitral tribunal shall determine the seat of arbitration and the date of initiation of the arbitral process.
2. The arbitral tribunal shall decide all questions relating to its competence and, subject to any agreement between the Contracting Parties, determine its own procedure.
3. At any stage of the proceedings and before it issues any resolution, the arbitral tribunal may propose to the Contracting, Parties that the dispute be settled amicably.
4. At all times, the arbitral tribunal shall afford a fair hearing to the Contracting Parties.

Article 27. Applicable Law

A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and with generally recognized principles of international law.

Article 28. Award

1. The arbitral tribunal shall reach its decision by majority vote. The award shall be issued in writing and shall contain the applicable factual and legal findings. A signed award shall be delivered to each Contracting Party.
2. The award shall be final and binding on the Contracting Parties.

Article 29. Costs

Each Contracting Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings, The costs of the presiding arbitrator and of other expenses associated with the conduct of the arbitration shall be borne equally by the Contracting Parties, unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Contracting Parties.

Section V. Final Provisions

Article 30. Consultations

A Contracting Party may propose to the other Contracting Party to carry out consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed by the Contracting Parties.

Article 31. Denial of Benefits

The Contracting Parties may decide jointly in consultation to deny the benefits of this Agreement to an enterprise of the other Contracting Party and to its investments, if a natural person or enterprise of a non-Contracting Party owns or controls such enterprise.

Article 32. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other in writing of the fulfilment of their domestic legal procedures in relation to the approval and entry into force of this Agreement.
2. This Agreement shall enter into force thirty (30) days after the date of the latter notification carried out through the diplomatic channels used by both Contracting Parties to notify the fulfilment of the requirements referred to in paragraph 1 above.
3. This Agreement shall remain in force for a period of ten (10) years and thereafter shall be in force for an indefinite period of time, unless either of the Contracting Parties delivers through diplomatic channels to the other Contracting Party a written notice of its decision to terminate this Agreement, with twelve (12) months in advance.
4. With respect to investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.
5. This Agreement may be modified by mutual consent of the Contracting Parties, and the agreed modification shall come into effect pursuant to the procedures set forth in paragraphs 1 and 2 above.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by respective governments, have signed this Agreement.

Done in duplicate at _____ on _____ in the Chinese, and _____ and English languages, all texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of _____