

# **Agreement Between The Government of The People's Republic of China and The Government of The Republic of Ghana Concerning The Encouragement and Reciprocal Protection of Investments**

The Government of the People's Republic of China and the Government of the Republic of Ghana,

Desiring to encourage, protect and create favourable conditions for investment by investors of one Contracting State in the territory of the other Contracting State based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both States,

Have agreed as follows:

## Article 1 Definitions

For the purpose of this Agreement,

(a) The term "investments" means every kind of asset made as investment in accordance with the laws and regulations of the Contracting State accepting the investment in its territory, including mainly:

- (i) movable and immovable property and other property rights;
- (ii) shares in companies or other forms of interest in such companies;
- (iii) a claim to money or to any performance having and economic value;
- (iv) copyrights, industrial property, know-how and technological process;
- (v) concessions conferred by law, including concessions to search for or exploit natural resources.

(b) The term "investors" means:

In respect of the People's Republic of China:

- (i) natural persons who have nationality of the People's Republic of China;
- (ii) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

In respect of the Republic of Ghana:

- (i) natural persons deriving their status as Ghanaian nationals from the law in force in the Republic of Ghana;

(ii) state corporations and agencies and companies registered under the laws of Ghana which invest or trade abroad.

(c) The term “return” means the amounts yielded by investment, such as profits, dividends, interests, royalties or other legitimate income.

#### Article 2 Promotion of Investments

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

2. Each Contracting State shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting States to or in the territory of the Former in connection with investments or activities or activities associated with such investments.

#### Article 3 Protection of Investments and Most Favoured Nation Treatment

1. Investments and activities associated with investments of investors of either Contracting State shall be accorded equitable treatment and shall enjoy protection in the territory of the other Contracting State.

2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favourable 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 State 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 Expropriation and Compensation for Losses

1. Either Contracting State may, for the national security and public interest expropriate, nationalize or take similar measures (hereinafter referred to as “expropriation”) against investment of investors of the other Contracting State in its territory, but subject to the following conditions:

(a) under domestic legal procedure;

(b) without discrimination;

(c) payment of compensation.

2. The compensation mentioned in Paragraph 1 (c) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

3. If an investor considers the expropriation mentioned in Paragraph 1 of this Article incompatible with the laws of the Contracting State taking such expropriation shall, upon the request of the investor, review the said expropriation.

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

#### Article 5 Repatriation of Capital and Returns

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

- (a) profits, dividends, interests and other legitimate income;
- (b) amounts from liquidation of investment;
- (c) payments made pursuant to a loan agreement in connection with investment;
- (d) licence fee in item (iv) of (a) Article 1;
- (e) payment of fees for management, technical assistance or technical service;
- (f) payments in connection with projects on contract;
- (g) normal earnings of nationals of the other Contracting State who work in connection with an investment in the territory of the one Contracting State.

#### Article 6 Transfer of Currency

1. The transfer mentioned in Article 4 and 5 of this Agreement shall be made at the official exchange rate as determined by the Central Bank of the Contracting accepting investment on the date of transfer.

2. Market rate shall be applicable if no official exchange rate is available.

#### Article 7 Subrogation

If a Contracting State or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting State, such other Contracting State shall recognize the transfer of any right or claim of such investor to the former Contracting States or its Agency and recognize the subrogation of the former Contracting State or its Agency to such right or claim. The subrogated right or claim shall not be greater than original right or claim of the said investor.

#### Article 8 Existing Investments

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting State in accordance with the laws and regulations of the other Contracting State in the territory of the Latter.

## Article 9 Settlement of Disputes of Contracting States

1. Dispute between the Contracting States concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through the diplomatic channel.
2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting State, be submitted to an ad hoc arbitral tribunal.
3. Such ad hoc tribunal comprises of three arbitrators. Within two months from the date on which either Contracting State receives the written notice requesting for arbitration from the other Contracting State, each Contracting State shall appoint one arbitrator. These 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 States. The third arbitrator shall be appointed by the two Contracting States as Chairman of the arbitral tribunal.
4. If the ad hoc arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting State 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 State 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 State shall be invited to make the necessary appointment (s).
5. The ad hoc arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the laws of the Contracting State accepting investment, the provisions of the Contracting State accepting investment, the provisions of this Agreement and the principles of international law recognized by both Contracting States.
6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting States. The ad hoc arbitral tribunal shall, upon the request of either Contracting State, explain the reasons of its award.
7. Each Contracting State shall bear the cost of its appointed arbitrator and borne in equal parts by the Contracting States.

## Article 10 Settlement of Dispute on Quantum of Compensation

1. Any dispute between either Contracting State and the investor of the other Contracting State concerning the amount of compensation for expropriation may be submitted to an arbitral tribunal.
2. 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 States 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 Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

3. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Rules of the Arbitration Institute of Stockholm Chamber of Commerce or Arbitration Rules of the International Center for Settlement of Investment Disputes.

4. 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 States shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

5. The tribunal shall adjudicate in accordance with laws of the Contracting State 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 principle of international law accepted by both Contracting States.

6. 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 in the arbitral proceedings shall be borne in equal parts by the parties to the dispute.

#### Article 11 Investments by Investors of Contracting States Operating from Third State

If a company which is owned or controlled in a third State by an investor of one Contracting State has made investments in accordance with the laws and regulations of the other Contracting States in the territory of the latter, the provisions of this Agreement shall apply to such investments only on the assumption that such third State is not entitled to exercise the right or abandons the right to request for compensation.

#### Article 12 Application of other Rules

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

#### Article 13 Meetings

1. The representatives of two Contracting States shall hold meetings from time to time for the purpose of:

- (i) reviewing the implementation of this Agreement;
- (ii) exchanging legal information and investment opportunities;
- (iii) resolving dispute arising out of investment;
- (iv) forwarding proposal on promotion of investment;

(v) studying other issues in connection with investment.

2. Where either Contracting State request consultation on any matters of Paragraph 1 of this Article, the other Contracting State shall give prompt response and the consultation be held alternately in Beijing and Accra

#### Article 14 Entry into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the done on which both Contracting States have received the written notice of fulfillment of their respective internal legal procedures, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting State fails to give a written notice to the other Contracting States to terminate it one year before the expiration specified in Paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting States may at any time terminate this Agreement by giving at least one year's written notice to the other Contracting State.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 13 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed their Agreement.

Done in duplicate at Beijing on October 12th, 1989 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 Ghana