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

The Government of the People's Republic of China and the Government of the Republic of Zimbabwe (hereinafter referred to as “the Contracting Parties”);

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

Recognising that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiatives of the investors and will increase prosperity in both Contracting Parties;

Desiring to intensify the economic cooperation of both Contracting Parties 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 of the other Contracting Party in the territory of the other Contracting Party, 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 such as copyrights, patents, utility models, industrial designs, trade marks, business secrets, technical processes and goodwill; and

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

2. The term “investors” means:

In respect of the People's Republic of China:

(a) natural persons who have nationality of the People's Republic of China in accordance with its laws; and

(b) 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 Zimbabwe:

(a) natural persons deriving their status as nationals of Zimbabwe from the laws in force in Zimbabwe; and

(b) corporations, firms and associations incorporated or constituted under the laws in force in Zimbabwe and having their principal place of business in Zimbabwe;

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

4. The term “laws” includes legislation as well as published administrative rules and regulations.

Article 2

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

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

Article 3

1. Investments and activities with investments 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 any other State.

3. The treatment and protection as provided for 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 any other State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation and any other matters of taxation or for facilitating frontier trade.

Article 4

1. Neither Contracting Party shall expropriate, nationalise or take similar measures (hereinafter referred to as “expropriation”) against investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

(a) for the public interest;

(b) under domestic legal procedure;

(c) without discrimination; and

(d) against compensation.

2. The compensation provided for in paragraph 1(d) of this Article shall be equivalent to the genuine value of the expropriated investment immediately before the date on which the actual or impending expropriation becomes publicly known. The amount of the compensation shall be calculated taking into account, as may be appropriate, the net asset value as certified by an independent firm of auditors as well as the market value. Such compensation shall be paid without delay, shall carry the usual commercial interest until the date of payment and shall be effectively realisable and freely transferable. Provision for payment of such compensation shall have been made in an appropriate manner at or prior to the time of expropriation.

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 other Contracting party, if it takes relevant measures, treatment no less favorable than that accorded to investors of any other State.

Article 6

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

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

(b) amounts form total or partial liquidation of investment;

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

(d) royalties and fees for the rights referred to in paragraph 1 (d) of Article 1;

(e) payments for management, technical assistance or technical service;

(f) payments in connection with projects on contract; and

(g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting party.

2. The transfers provided for in paragraph 1 of this Article shall be made without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer.

Article 7

If a Contracting Party or its Agency makes payment to 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 right 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 be settled within six months, it shall upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal (hereinafter referred to as the tribunal).

3. Such tribunal shall comprise of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from

the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within a further two months, together select a third arbitrator who shall be a national of any other 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 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 tribunal shall determine its own procedure. The tribunal shall reach its decision 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 decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons for its decision.

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 equally by the Contracting Parties.

Article 9

1. Any dispute between an investor of either Contracting Party and the other Contracting Party (hereinafter referred to as the “parties”)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 it 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 provided for in paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal.

The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure provided for 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 any other 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 shall 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 Centre 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 laws 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 equally by the parties to the dispute.

Article 10

This Agreement shall apply to investments which were made prior to or after its entry into force by investors of either Contracting Party is accordance with the laws of the other Contracting Party in territory of the other Contracting Party.

Article 11

1. The representatives of the 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; and

(e) studying other issues in connection with investments.

2. Where either Contracting Party requests consultation on any matters provided for in paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Harare.

Article 12

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 ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreements one year before the expiration provided for in paragraph 1 of this Article.

3. After the expiration of the initial ten 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 investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof the undersigned duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at Harare on May 21, 1996 in the English and Chinese languages, both texts being equally authentic.

For the Government of	For the Government of the Republic of Zimbabwe

the People's Republic of China

Wu Yi Herbert Murerwa