

法規名稱：INVESTMENT PROMOTION ACCORD BETWEEN TAIPEI ECONOMIC AND CULTURAL OFFICE IN AUSTRALIA AND AUSTRALIAN COMMERCE AND INDUSTRY OFFICE, TAIPEI

簽訂日期：民國 100 年 05 月 11 日

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RECOGNISING that foreign investment is facilitated when foreign investors abide by the laws and policies of the host territory;

NOTING the favourable conditions for investment in the territory represented by the Taipei Economic and Cultural Office in Australia brought about by the Statute for Investment by Foreign Nationals 1997 which gives the same legal protection to investors from the territory represented by the Australian Commerce and Industry Office, Taipei as that given to other foreign corporations;

NOTING the favourable conditions for investment in the territory represented by the Australian Commerce and Industry Office, Taipei brought about by the law in force in the territory it represents, including the Foreign Corporations (Application of Laws) Act 1989 which gives the same legal protection to investors from the territory represented by the Taipei Economic and Cultural Office in Australia as that given to other foreign corporations;

RECOGNISING that the promotion and reciprocal protection of investments would be conducive to the stimulation of individual business initiative and would increase prosperity of the territories they represent;

RECOGNISING that investments made under this Accord are governed by the domestic laws of the host territory;

TAIPEI ECONOMIC AND CULTURAL OFFICE IN AUSTRALIA and AUSTRALIAN COMMERCE AND INDUSTRY OFFICE, TAIPEI (" the Parties'') mutually decide:

#### Definitions

1. For the purposes of this Accord:

“ authority'', in relation to a Party, means a body established for a public purpose under a law that is in force in the territory represented by the Party;

“ host territory'' means the territory in which an investment is admitted and is represented by a Party;

“ investment ” means every kind of asset that is owned or controlled, directly or indirectly, by an investor of the territory represented by a Party and admitted subject to the investment laws and policies of the host territory. It includes:

- (a) tangible property;
- (b) intangible property (for example, rights such as mortgages, liens or pledges) ;
- (c) any form of interest in a company (for example, shares, stocks and debentures) ;
- (d) a loan or claim to money;
- (e) a claim to performance having an economic value;
- (f) intellectual property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill;
- (g) business concessions and any other rights (for example, rights to engage in agriculture, forestry, fisheries and animal husbandry; rights to search for, extract or exploit natural resources; and rights to manufacture, use and sell products) that:
  - (i) are conferred by law or contract; and
  - (ii) are required to conduct economic activity; and
  - (iii) have economic value;
- (h) activities associated with investments (for example, the organization and operation of business facilities; the acquisition, exercise and disposition of property rights including intellectual property rights; the raising of funds; and the purchase and sale of foreign exchange) .

“ investor ” , in relation to the territory represented by the Taipei Economic and Cultural Office in Australia, means:

- (a) a natural person who is a national of the territory represented by the Party, or
- (b) a juristic person, which includes a corporation, association or other entity, that is incorporated, constituted, set up, or otherwise duly organized in accordance with the law of the territory represented by the Party, that owns or controls an investment in the host territory.

"investor", in relation to the territory represented by the Australian Commerce and Industry Office, Taipei, means:

- (a) a natural person:
  - (i) who is a citizen or permanent resident of the territory of Australia; and
  - (ii) who owns or controls an investment in the host territory;or
- (b) a company that owns or controls an investment in the host

territory.

"permanent resident" means a natural person whose residence in the territory of Australia is not limited as to time under that territory's law.

"company" means a corporation, association, partnership, trust or other legally-recognised entity that is incorporated, constituted, set up, or otherwise duly organised:

- (i) under the law of the territory of Australia; or
- (ii) under the law of a third economy and is owned or controlled by an entity described above or by a natural person who is a citizen or permanent resident of the territory of Australia.

"territory represented by a Party" means:

- (a) in relation to the Taipei Economic and Cultural Office in Australia, the territory of Taiwan. and
- (b) in relation to the Australian Commerce and Industry Office, Taipei, the territory of Australia;

2. A reference in this Accord to a law or policy is a reference to the law or policy as applicable from time to time.
3. For the purposes of this Accord, a natural person or company will be regarded as controlling a company or an investment if the person or company has a substantial interest in the company or the investment. Any question arising out of this Accord concerning the control of a company or an investment will be resolved to the satisfaction of the Parties;

#### Application

4. This Accord will apply to investments whenever made.
5. This Accord will apply in conformity with applicable bilateral and multilateral treaties and other relevant international instruments in force in the respective territories represented by each Party. This Accord will not prevent an investor of the territory represented by a Party from taking advantage of provisions of any law or policy of the territory represented by the other Party that is more favourable than the provisions of this Accord.

#### Promotion and protection of investments

6. In accordance with the investment laws and policies of the territory it represents, each Party will encourage and promote investments in that territory by investors of the territory represented by the other Party.

7. Each Party will work towards the improvement of the investment climate in the territory it represents.
8. Each Party will, subject to the laws of the territory it represents, encourage the authorities of that territory to treat investments in a fair and equitable manner and to protect investments in their territory. Subject to the laws of the territory it represents, neither Party will impair the management, maintenance, use, enjoyment or disposal of investments.
9. The Parties will not be liable for any decision made by an investor.

#### Non-discrimination

10. Each Party will encourage the authorities of the territory it represents to treat investments in that territory on a basis no less favourable than that accorded to investments of investors of any third territory. The Parties recognise that a host territory will not be obliged to extend to an investment any treatment, preference or privilege resulting from:
  - (a) any customs union, economic union, free trade area or regional economic integration agreement or arrangement to which the territory it represents belongs; or
  - (b) the provisions of a double taxation agreement or arrangement to which it or the territory it represents is a party.

#### Entry and sojourn

11. Each Party, subject to the laws in force in the territory it represents, recognises the desirability of allowing natural persons who are:
  - (a) investors of the territory represented by the other Party; or
  - (b) employees of investors incorporated, constituted, set up, or otherwise duly organised under the law of the territory represented by that other Party; to enter and remain in the territory it represents for the purpose of engaging in investment-related activities.
12. Each Party will, subject to the laws of the territory it represents, encourage the authorities of the territory it represents to ensure that investors are able to employ key technical and managerial personnel of their choice regardless of citizenship.

#### Transparency of laws

13. Each Party will ensure that the investment laws and policies that are in force in the territory it represents are publicly available in a prompt, transparent and readily accessible manner.
14. Each Party will exchange information about the investment environment and incentives in the territory it represents and will make this information available to potential investors.

#### Expropriation

15. Each Party will encourage the authorities of the territory it represents not to expropriate investments unless the following conditions have been complied with:
  - (a) the expropriation is non-discriminatory and for a public purpose;
  - (b) the expropriation is made with due process and in accordance with;
    - (i) the laws of the host territory; and
    - (ii) the principles of international law;
  - (c) the expropriation is accompanied by the payment of prompt, adequate and effective compensation; and
  - (d) the investor whose investment is expropriated is given a right, under the laws of the host territory, to prompt review by a judicial or other independent authority.
16. The compensation referred to in paragraph 15 (c) will be computed on the basis of the fair market value of the investment immediately before the expropriation or impending expropriation became public knowledge. Where that value cannot be readily ascertained, the compensation will be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.
17. A reference in paragraph 15 to expropriation includes a reference to nationalisation and any measure that has an effect that is similar to expropriation or nationalisation.

#### Compensation for losses

18. Each Party will encourage the authorities of the territory it represents to ensure that when those authorities adopt any measures relating to losses in respect of investments in their territory by investors of any territory owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar events, the

treatment accorded to investors of the territory represented by the other Party as regards restitution, indemnification, compensation or other settlement will be no less favourable than that accorded to investors of any other territory.

#### Transfers

19. Each Party will encourage the authorities of the territory it represents to ensure that investors are able to transfer funds relating to their investments freely and without unreasonable delay. Each Party will also encourage the authorities of the territory it represents not to hinder such transfers.
20. Each Party recognises that the transfer of funds relating to investments will be in a currency which is widely traded in international foreign exchange markets and that, unless otherwise arranged by the investor and the relevant authority of the host territory, the transfer will be:
  - (a) at the market exchange rate applying on the date of transfer; and
  - (b) in accordance with the laws of the host territory.
21. In paragraphs 19 and 20, a reference to funds includes a reference to:
  - (a) the initial capital and any additional capital used to maintain or expand the investment;
  - (b) an amount yielded by, or derived from, an investment (for example, profits, dividends, interest, capital gains, royalty payments, management or technical assistance fees, payments in connection with intellectual property rights and all other lawful income, whether in cash or in kind) ;
  - (c) proceeds from the sale or partial sale or liquidation of the investment;
  - (d) payments made pursuant to a loan arrangement or for compensation for losses; and
  - (e) unspent earnings and other remuneration of personnel engaged from abroad in connection with that investment.

#### Consultations between the Parties

22. At the request of one of the Parties, both Parties will consult on matters or disputes concerning the interpretation or application of this Accord.

#### Settlement of disputes

23. The parties to an investment-related dispute will endeavour to resolve the dispute by prompt and friendly consultations and negotiations.

24. If the dispute cannot be resolved through consultations and negotiations, any party to the dispute may:
- (a) in accordance with the laws of the host territory, initiate proceedings before that host territory ' s competent judicial or administrative bodies; or
  - (b) by mutual consent of the other parties to the dispute, refer the dispute to a competent arbitral tribunal or to any other international tribunal.

The Parties recognise the desirability of a legal system that provides for full access to competent judicial or administrative tribunals and provides for the recognition and enforcement of final judgements, rulings and arbitral awards.

#### Subrogation

25. If a Party or an appropriate authority of the territory represented by the Party makes a payment to an investor from the territory it represents under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment, the other Party will encourage the appropriate authorities of the territory it represents to recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim, if recognised, will not be greater than the original right or claim of the investor.

#### Effect

26. This Accord will come into effect on signature by both Parties and will remain in effect indefinitely. It will replace the Memorandum of Understanding on the Promotion of Investment and Technology Transfer signed on 17 August 1993. It may be amended or terminated at any time by arrangement between the Parties.

Signed in duplicate at Taipei on the eleventh day of May 2011 in the Chinese and English languages, both texts being authentic. In the event of any divergence of interpretation between the Chinese text and the English text, the English text will prevail.

For the Taipei Economic  
and Cultural Office in  
Australia  
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For the Australian  
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