

**駐澳大利亞臺北經濟文化辦事處與
澳大利亞商工辦事處
投資促進協議**

咸信外人投資之促進有賴外國投資者遵循投資所在領域之法律與政策；

注意到駐澳大利亞臺北經濟文化辦事處所代表領域之 1997 年外國人投資條例於其所代表領域給予投資之有利條件，給予澳大利亞商工辦事處所代表領域投資人與其他外國公司相同程度之法律保護；

注意到澳大利亞商工辦事處所代表領域之有效法律（包括 1989 年外國公司法）於其所代表領域給予投資之有利條件，給予駐澳大利亞臺北經濟文化辦事處所代表領域投資人與其他外國公司相同程度之法律保護；

咸認投資之促進及相互保障有助於激勵個別事業之開辦，並增進雙方所代表領域之繁榮；

認知到依據本協議所為之投資應依循投資所在領域之國內法；

駐澳大利亞臺北經濟文化辦事處與澳大利亞商工辦事處（以下稱為「雙方」）茲協議如下：

定義

一、 就本協議之目的而言：

締約一方之「權責機關」係指基於公共目的依據締約一方所代表領域內有效的法律所設立之實體。

「投資所在領域」係指投資獲得核准且由締約一方所代表之領域；

「投資」係指締約一方領域之投資人於締約他方領域內經投資所在領域之投資法律及政策許可，直接或間接所擁有或控制之各類資產，包括：

- (一) 有形資產；
- (二) 無形資產（如抵押權、留置權或質權等權利）
- (三) 任何形式的公司利益（如股份、股票和債權憑證等）；
- (四) 借款或金錢請求權
- (五) 具經濟價值之履約請求權
- (六) 智慧財產權，包括與著作權、專利、商標、商名、工業設計、營業秘密、專門技術和商譽相關之權利；
- (七) 商業特許和其他權利（如從事農、林、漁、牧業的權利；對自然資源探勘、開採或利用的權利；製造、使用、銷售商品的權利等）且：

1. 為法律或契約所賦予；和
2. 應從事經濟活動；和
3. 具經濟價值。

(八) 與投資有關之活動（例如：商業設施之組織及營運；財產權（包含智慧財產權）之取得、使用及讓與；資金之募集；外匯之買入及賣出）。

就駐澳大利亞臺北經濟文化辦事處所代表的領域而言，「投資人」係指：

- (一) 為該締約一方所代表領域國民之自然人；或
- (二) 擁有或控制投資所在領域內之投資之法人，包含依據該締約一方所代表領域之法律所組織、設立、建立或依法以其他適當方式組成之公司行號、協會或其他實體。

就澳大利亞商工辦事處所代表的領域而言，「投資人」係指：

- (一) 符合以下條件之自然人：
 1. 為澳大利亞領域之公民或永久居民；且
 2. 擁有或控制投資所在領域內之投資者；或

(二) 擁有或控制投資所在領域內之投資之公司。

「永久居民」係指依據澳大利亞領域之法律，可不受時間限制居留於該領域的自然人。

「公司」係指依據下列法律所組織、設立、建立或以其他適當方式組成之公司行號、協會、合夥、信託或其他法律認可之實體：

- (一) 依據澳大利亞領域內之法律；或
- (二) 依據第三國法律，由上述實體、澳大利亞之公民或永久居民所擁有或控制。

「締約一方所代表領域」係指：

- (一) 就駐澳大利亞臺北經濟文化辦事處而言，係指臺灣之領域；
- (二) 就澳大利亞商工辦事處而言，係指澳大利亞之領域。

二、本協議所提及之法律或政策，係指當時所應適用者。

三、基於本協議之目的，自然人或公司若對特定公司或投資享有實質利益，將被認定為控制該公司或投資。本協議下任何與公司或投資控制相關之問題，其解決結果應

得到雙方之滿意。

本協議之適用

四、 本協議適用於任何時點所做的投資。

五、 本協議適用時，應符合締約任何一方所代表領域有效之雙邊、多邊和其他相關國際文書。本協議將不禁止締約一方所代表領域之投資人適用締約他方所代表領域之法律或政策而獲益，如上開規定比本協議為優惠。

投資之促進及保護

六、 於符合締約一方所代表領域之投資法律與政策之情況下，任一締約方將鼓勵並促進於其領域內締約他方所代表領域投資人之投資。

七、 締約任何一方將致力改善其所代表領域之投資環境。

八、 締約任何一方在其所代表之領域之法律下，將鼓勵其領域之權責機關，以公平且平等之方式對待並保護其領域內之投資。在其所代表之領域之法律下，締約任何一方不得損害此等投資之管理、維持、運用、享用或處分。

九、 雙方對於投資人所為之任何決定不負責任。

不歧視原則

十、締約一方將鼓勵所代表領域之權責機關對其領域內之投資，提供不低於任何第三方領域投資人在其領域內之投資之待遇。雙方咸認，投資所在領域並無義務將因下列原因而生之待遇、優惠或特權擴及適用至投資：

- (一) 締約一方所代表領域所屬之關稅同盟、經濟同盟、自由貿易區、區域經濟整合協定或協議；或
- (二) 締約一方或其所代表領域為一方當事人之雙重課稅協定或協議。

進入與居留

十一、締約任一方在其所代表之領域之有效法律下，認知到下列自然人為從事投資相關活動之目的，進入並停留於其所代表領域之需要：

- (一) 締約他方所代表領域之投資人；或
- (二) 依據締約他方所代表領域之法律組織、設立、建立或依法以其他適當方式組成之投資人之員工。

十二、締約任一方在其所代表之領域之法律下，將鼓勵其所代表領域之權責機關確保投資人得依其選擇雇用關鍵技術人員及經理人員，無論該人員之國籍為何。

法律透明化

十三、締約任一方將確保在其所代表領域內之有效投資法律及政策得以即時、透明且易於接近之方式公開取得。

十四、締約任一方將交換有關其所代表領域投資環境與誘因之資訊，且讓潛在投資者可獲得該資訊。

徵收

十五、除非符合下列情況，締約任一方將鼓勵其所代表領域之權責機關不得對投資為徵收：

(一) 徵收是基於非歧視性原則及公共目的；

(二) 徵收係依正當程序並符合：

1. 投資所在領域之法律；及

2. 國際法原則；

(三) 徵收需給予即時、充分及有效之補償；及

(四) 投資被徵收之投資人有權依據投資所在領域之法律，請求司法或其他獨立機關迅予審查。

十六、第十五條第(三)項所稱之補償應基於投資緊接於徵收前或當擬定徵收之資訊成為眾所皆知時之公平市價計算之。當補償價值無法確定時，補償應依據一般公認

的計價原則與公平原則，將投入資本、折舊、資本匯回、重置價值、貨幣匯率變動及其他相關因素納入考量。

十七、第十五條所稱之徵收，包括國有化及任何與徵收或國有化具類似效果之措施。

損失補償

十八、締約任一方將鼓勵其所代表領域之權責機關，確保該權責機關於其領域內任何領域投資人之投資因戰爭或其他武裝衝突、革命、國家緊急狀況、內亂或其他類似事件受有損失而採取任何措施時，對於締約他方所代表領域之投資人所給予關於回復原狀、賠償、補償或其他解決之待遇，將不低於其給予任何其他領域投資人之待遇。

轉移

十九、締約任一方將鼓勵其所代表領域之權責機關確保投資人可自由且無不合理延遲地轉移其與投資相關之資金。締約任一方亦將鼓勵其所代表領域之權責機關不阻礙此等轉移。

二十、雙方咸認與投資相關之資金轉移將以在國際外匯市場廣泛交易之貨幣進行，且除其他由投資人與投資所在領域相關權責機關安排之情形外，該轉移將依下列規定

進行：

- (一) 依轉移當日之市場匯率進行。
- (二) 依投資所在領域之法律進行。

二十一、 第十九條及第二十條所稱資金包括：

- (一) 初始資本及為維持或擴充投資之額外資本；
- (二) 由投資所收益或產生之金額（例如：現金或實物之利潤、股利、利息、資本利得、權利金、管理或技術服務費、與智慧財產權相關之費用及其他合法收入）；
- (三) 出售投資（全部或部分）或清算投資之所得；
- (四) 為償付貸款或損失補償所為之付款；
- (五) 未支用之與投資相關之境外員工收入及其他薪酬。

雙方諮商

二十二、 在締約一方請求下，雙方將就與本協議之解釋或適用相關之事項或爭議進行諮商。

爭議解決

二十三、 投資相關爭議之當事人將盡力以及時且友善之諮商、協商解決紛爭。

二十四、 若爭議無法以諮商、協商解決，爭議之任一當事人得：

- (一) 依投資所在領域之法律，向投資所在領域有權之司法或行政機關發動程序；或
- (二) 在雙方爭議當事人之同意下，將該爭議移交有判斷權限之仲裁庭或其他國際法庭。

雙方咸認有意願建立一法律制度，提供充分利用有權之司法及行政法院之管道，並對確定判決、確定裁定或仲裁判斷提供承認與執行機制。

代位權

二十五、 倘締約一方或締約一方所代表領域之適當權責機構依據保證、保險契約或與投資相關而賦予之其他形式之賠償，對其所代表領域之投資人支付款項時，締約他方將鼓勵所代表領域之適當權責機關承認任何與該投資相關之權利或請求權之代位或移轉。該等代位或轉移之權利或請求，如經確認，將不超過投資者的原權利或請求。

生效

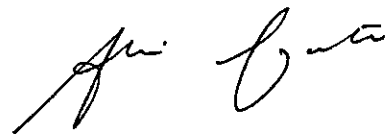
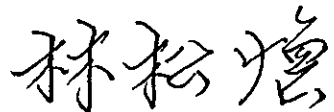
二十六、 本協議於雙方簽署後生效，且將持續有效。本協議將取代於西元 1993 年 8 月 17 日簽署之中澳投資促進

與技術移轉備忘錄。本協議得依雙方之安排隨時修正或終止。

本協議以中文及英文各繕兩份，於西元二〇一一年五月十一日在臺北簽署，兩種文字約本同一作準，惟如解釋有歧異時，以英文本為準。

駐澳大利亞臺北經濟文化辦事處

澳大利亞商工辦事處



林松煥代表

柯未名代表

Investment Promotion Accord

Between

Taipei Economic and Cultural Office in Australia

And

Australian Commerce and Industry Office, Taipei

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

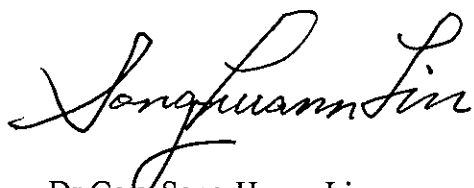
insurance or other form of indemnity it has granted in respect of an investment, the other Party will encourage the appropriate authorities of the territory it represents to recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right 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.

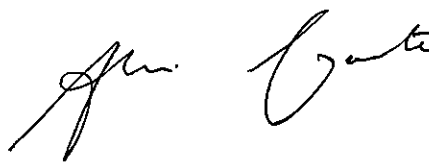
Signed in duplicate at Taipei on the eleventh day of May 2011 in the Chinese and English languages, both texts being authentic. In the event of any divergence of interpretation between the Chinese text and the English text, the English text will prevail.

For the Taipei Economic and Cultural
Office in Australia



Dr Gary Song-Huann Lin
Representative, TECO

For the Australian Commerce and Industry
Office, Taipei



Ms Alice Cawte
Representative, ACIO