

AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

PREAMBLE

The Government of the People's Republic of China and the Government of the Islamic Republic of Iran hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States;

Intending to utilize their economic resources and potential facilities in the area of investments as well as to create and maintain favorable conditions for investments of the investors of the Contracting Parties in each other's territory and;

Recognizing the need to promote and protect investments of the investors of the Contracting Parties in each others' territory;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement, the meanings of the terms used therein are as follows:

1. The term "investment" refers to every kind of property or asset, including the following, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party:

- (a) Movable and immovable property as well as rights related thereto; such as mortgages and pledges;
- (b) Shares, debentures, stocks and any other kind of participation in companies;
- (c) Right to claim money and/or any other performance having an economical value associated with an investment;
- (d) Industrial and intellectual property rights;
- (e) Special rights conferred by law including rights to search for, extract or exploit natural resources.

Any change in the form in which assets are invested does not affect their character as investments, provided that such changes are consistent with the legislation of the host Contracting Party.

2. The term "investors" refers to the following persons who invest in the territory of the other Contracting Party within the framework of this Agreement:

- (a) Natural persons who, according to the laws of either Contracting Party, are considered to be its national and have not the nationality of the host Contracting Party.
- (b) Legal entities, including companies, corporations, associations, and other organizations incorporated and constituted under the laws and regulations of either Contracting Party and have their seats in the territory of that Contracting Party.

3. The term "returns" refers to the amounts legally yielded by an investment including profit derived from investments, dividends, royalties, fees and other legitimate income.

Article 2. Promotion of Investments

1. Either Contracting Party shall encourage its investors to invest in the territory of the other Contracting Party.

2. Either Contracting Party shall, within the framework of its laws and regulations, create favorable conditions for attraction of investments of investors of the other Contracting Party in its territory.

Article 3. Admission of Investment

1. Either Contracting Party shall admit investments of investors of the other Contracting Party in its territory in accordance with its laws and regulations.

2. When an investment is admitted, either Contracting Party shall, in accordance with its laws and regulations, grant visas, work permits as well as all other necessary permits for the realization of such an investment.

Article 4. Protection of Investments

1. Investments of investors of either Contracting Party effected within the territory of the other Contracting Party shall, in accordance with the laws and regulations of the host Contracting Party, receive full legal protection and fair treatment not less favourable than that accorded to its own investors or to investors of any third state who are in a comparable situation.

2. If a Contracting Party has accorded or shall accord in future special advantages or rights to investor(s) of any third state by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional organization and /or by virtue of an arrangement on the avoidance of double taxation, it shall not be obliged to accord such advantages or rights to investors of the other Contracting Party.

Article 5. More Favourable Provisions

Notwithstanding the terms set forth in this Agreement, more favorable provisions which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 6. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall not be nationalized, confiscated, expropriated or subjected to similar measures by the other Contracting Party except such measures are taken for public purposes, in accordance with the legal procedure provided for in the laws and regulations of that Contracting Party, in a non-discriminatory manner and against compensation.

2. The amount of compensation shall be equivalent to the value of investment immediately before the action of nationalization, confiscation or expropriation was taken. The compensation shall be made without delay, be effectively realizable and freely transferable. In case of undue delay, which is longer than 30 days as from the date of expropriation, the financial costs related to the delayed payment shall be borne by the expropriating Contracting Party from the date on which the payment becomes due to the date of actual payment.

Article 7. Losses

Investors of either Contracting Party whose investments suffer losses due to any armed conflict, war or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment as regards restitution, indemnification, compensation and other settlements no less favorable than that accorded to its own investors or to investors of any third country.

Article 8. Repatriation and Transfer

1. Each Contracting Party shall, in accordance with its laws and regulations, permit in good faith the following transfers related to investments referred to in this Agreement, to be made freely and without delay out of its territory:

(a) Returns;

(b) Proceeds from the sale and/or liquidation of all or part of an investment;

(c) Royalties and fees related to transfer of technology agreement;

(d) Sums paid pursuant to Article 6 and/or 7 of this Agreement; Article 6 and/or 7 of this Agreement;

(e) Loan installments which are related to an investment and paid out of such investment activities;

(f) Monthly salaries, wages and other revenues received by the nationals of the other Contracting Party, who have obtained the corresponding work permits related to an investment in the territory of the host Contracting Party;

2. The above transfers shall be effected in a convertible currency and at the current rate of exchange in accordance with the exchange regulations prevailing on the date of transfer.

3. The investor and the host Contracting Party may agree otherwise on the manner or repatriation or transfers referred to in this Article.

Article 9. Subrogation

If a Contracting Party or its designated agency, within the framework of a legal system, subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks:

(a) Such subrogation shall be recognized by the other Contracting Party;

(b) The subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Article 10. Observance of Commitments

Either Contracting Party shall guarantee the observance of the commitments it has entered into with respect to investments of investors of the other Contracting Party.

Article 11. Scope of the Agreement

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

As far as the Islamic Republic of Iran is concerned, this Agreement shall only apply to the investments approved by Organization for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I.) or any other agency which may succeed it.

Article 12. Settlement of Disputes between a Contracting Party and Investor(s) of the other Contracting Party

1. If any dispute arises between the host Contracting Party and investor(s) of the other Contracting Party with respect to an investment, the host Contracting Party and the Investor(s) shall primarily endeavor to settle the dispute in an amicable manner through negotiation and consultation.

2. In the event that the host Contracting Party and the investor(s) can not agree within six months from the date of notification of the claim by one party to the other, either of them may refer the dispute to the competent courts of the host Contracting Party or with due regard to its own laws and regulations to an arbitral tribunal of three members referred to in paragraph 5 below.

3. A dispute primarily referred to the competent court of the host Contracting Party, as long as it is pending, can not be referred to arbitration save with the parties' agreement; and in the event that a final judgement is rendered, it can not be referred to arbitration.

4. National courts shall not have jurisdiction over any dispute referred to arbitration. However, the provisions of this paragraph do not bar the winning party to seek for the enforcement of the arbitral award before national courts.

5. The host Contracting Party or the investor(s) of the other Contracting Party who desires to refer the dispute to arbitration shall appoint an arbitrator through a written notice sent to the other party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the chairman. In the event that either party fails to appoint its arbitrator within the mentioned period and/or the appointed arbitrators fail to agree on the chairman, either party may request the Secretary General of the International Center for Settlement of Investment Disputes to appoint the failing party's arbitrator or the chairman, as the case may be. However, the chairman shall be a national of a state having diplomatic relations with both Contracting Parties.

6. The ad hoc arbitral tribunal shall determine its own procedure and the place of arbitration.

7. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

8. Each party to the dispute shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the chairman and tribunal shall be borne in equal parts by the parties to the dispute. The tribunal may in its award direct that a higher proportion of the costs be borne by one of the parties to the dispute.

Article 13. Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled amicably by consultation. In case of disagreement, either Contracting Party may subject to its laws and regulations, while sending a notice to the other party, refer the case to an arbitral tribunal of three members consisting of two arbitrators appointed by the Contracting Parties and a chairman.

In case the dispute is referred to the arbitral tribunal, either Contracting Party shall appoint an arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the chairman within sixty days from the date of last appointment. If either Contracting Party does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the chairman within the said periods, each Contracting Party may request the President of the International Court of Justice to appoint the arbitrator of the failing party or the chairman, as the case may be. However, the chairman shall be a national of a state having diplomatic relations with both Contracting Parties at the time of the appointment.

2. In case the chairman is to be appointed by the President of the International Court of Justice, if the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President of the International Court of Justice, and if the Vice-President is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.

3. Subject to other provisions agreed by the Contracting Parties, the arbitral tribunal shall determine its procedure and place of arbitration.

4. The decisions of the arbitral tribunal shall be binding on the Contracting Parties.

Article 14. Validity of the Agreement

1. This Agreement shall enter into force for a period of ten years on the first day of the following month after the date of the last notification of either Contracting Party to the other Contracting Party that it has fulfilled necessary measures in accordance with its laws and regulations for the entry into force of this Agreement. After the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notifies the other Contracting Party in writing of its unwillingness to continue with it, six months prior to the expiration or termination thereof.

2. After the expiration of the validity or termination of this Agreement its provisions shall apply to investments under this Agreement for a further period of ten years.

In Witness Whereof the undersigned, duly authorized thereto by respective Governments, have signed this Agreement

Done in duplicate at Beijing on June 22, 2000 corresponding to 2nd Tir1379 in the Chinese, Persian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Islamic Republic of Iran