

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of People's Republic of China and the Government of the People's Republic of Bulgaria.

Desiring to encourage, protect and create favourable conditions for investments 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.

For the purposes of this agreement.

1 . The term "investments" means property values and rights made as investment in accordance with the laws and regulations of the contracting state accepting the investment in its territory, including mainly:

- a) Property rights and other real rights;
- b) Shares in companies or other forms of interest in such companies;
- c) A claim to money or to any performance having an economic value;
- d) Copyrights, industrial property rights (such as patent, licences, trademarks, land names), technological process, know-how and goodwill.

2 . The term "investore" means:

In respect of the People's Republic of China:

- a) Natural Persons who have nationality of the People's Republic of China;
- 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 People's Republic of Bulgaria:

- a) Juristic person constituted in compliance with Bulgarian legislation, having their seats in the territory of the People's Republic of Bulgaria;
- b) Natural persons who, in compliance with the Bulgarian legislation, are nationals of the People's Republic of Bulgaria and inasmuch as they are authorized to act of their capacity of investors in compliance with the Bulgarian law.

3 . The term "returns" means the amounts yielded by investment, such as profits, dividends, interests or other legitimate income.

4 . The term "territory" means the state territory of the People's Republic of China and the people's Republic of Bulgaria as well as the maritime areas adjacent to the coast of the state concerned to the extent to which the state may exercise sovereignty, sovereign rights or jurisdiction in those areas according to international law.

Article 2.

- 1 . Each Contracting State shall encourage investors of the other Contracting State to commit investments in its territory and admit such investments in accordance with its laws and regulations.
- 2 . Investments made in accordance with the laws and regulations of the Contracting State in the territory of which they are made and the returns from such investments, shall enjoy the protection of the present agreement.
- 3 . In case of reinvestment of returns from the investments, these reinvestments and their returns will enjoy the same protection as the initial investments.

Article 3.

- 1 . Investments and activities associated with the investments of investors of either Contracting State shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security 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 any 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.

- 1 . Either Contracting State may, for public interest, expropriate or nationalize (hereinafter referred to as "expropriation") investment of investors of the other Contracting State in its territory, but the following conditions shall be met:
 - a) Under domestic legal procedure;
 - b) Without discrimination.
 - c) Against 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 investors considers the expropriation mentioned in paragraph 1 of this article incompatible with the laws of the Contracting State taking such expropriation, the competent court 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, armed conflict or other similar events, shall be accorded by the latter Contracting State, if it provides indemnification or compensation, treatment no less favourable than that accorded to investors of a third state.

Article 5.

- 1 . Each contracting state shall, subject to its laws and regulations, guarantee investors of other Contracting state the transfer of the following:
 - a) Capital and additional amounts that are necessary to maintain or to increase the investment;
 - b) Returns from investment;
 - c) Amounts from the total or Partial liquidation of an investment;
 - d) Amounts of the compensation mentioned in Article 4;
 - e) Partial earnings of nationals of the other Contracting State who work in connection with investment in the territory of the one Contracting State.
- 2 . The transfer mentioned above shall be made after taxation at the official exchange rate in effect of the Contracting State accepting investment on the date of transfer.

Article 6.

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; obligation or claim of such investor to the former Contracting State or its agency and recognize the subrogation of the former Contracting State or its agency to such right, obligation or claim. The subrogated right, obligation or claim shall not be greater than the original right, obligation or claim of the said investor.

Article 7.

This agreement shall apply to investments which are made by investors of either Contracting State in accordance with the laws and regulations of the other Contracting State in the territory of the latter after January 1, 1957.

Article 8.

- 1 . Disputes 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, those 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 this agreement and the principles of international law recognized by both Contracting States.
- 6 . Before the arbitral tribunal decides it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. 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 representation. The relevant costs of the chairman and the ad hoc tribunal shall be borne in equal parts by the Contracting States.

Article 9.

- 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 ad hoc 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, applying the arbitration rules of the United Nations Commission for International Trade Law (UNCITRAL) OF 15 December 1976.

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 the 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 principles 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 costs 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 10.

Either Contracting State shall grant in accordance with its laws and regulations and as possible the facilities and assistance concerning the entry, stay, work and movement in its territory of nationals of the other Contracting State and of their families who carry out activities connected with the investments in the sense of the Present agreement.

Article 11.

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 12.

1 . The representatives of the two Contracting States will hold meetings when necessary for the purpose of:

- 1) Reviewing the implementation of this agreement;
- 2) Exchanging legal information and investment opportunities;
- 3) Resolving dispute arising out of investment;
- 4) Forwarding proposals on promotion of investment;
- 5) Studying other issues in connection with investment.

2 . Where either Contracting State requests 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 both states.

Article 13.

1 . This agreement shall enter into force thirty days after the date 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 State 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 State 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 12 shall continue to be effective for a further period of 15 years from such date of termination.

Done at Sofia on 27th June, 1989 in three originals in Chinese, English and Bulgarian languages, all being equally authentic. In case of dispute, the original in the English language shall prevail.

For the Government of the people's Republic of China (Wang Pinqing)

For the Government of the People's Republic of Bulgaria

Protocol

Article 3 shall be amended as follows:

1 . Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

2 . Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3 . (a) The National and Most-Favoured-Nation Treatment provisions of this Agreement shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic or monetary union, a common market or a free trade area.

(b) The Contracting Party understands the obligations of the other Contracting Party as a member of a customs, economic or monetary union, a common market or a free trade area to include obligations arising out of an international agreement or reciprocity agreement of that customs, economic or monetary union, common market or free trade area.

(c) The provisions of this Agreement shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to the investments or returns of such investments, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

4 . Each Contracting Party reserves the right to make or maintain, in accordance with the legislation of its State, exceptions from national treatment granted according to paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exception.

5 . If the provisions of domestic law of the State of either Contracting Party or obligations under present or future international agreements applicable between the Contracting Parties or other international agreements to which they are parties, contain regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulations shall to the extent that are more favourable prevail over the present Agreement."

In Article 5, Paragraph 1, the following words shall be added after "Subject to its laws and regulations":

"and without prejudice to any applicable international obligation".

This Additional Protocol shall be regarded as an integral part of this Agreement. Both Governments shall notify each other through diplomatic channels that they have complied with the legal requirements for the entry into force of this Additional Protocol. This Additional Protocol shall enter into force on the 30th day after the second notification is received.