

# **Agreement between the Federal Republic of Germany and the People's Republic of China on the reciprocal promotion and protection of investments**

The People's Republic of China and the Federal Republic of Germany, desiring to develop economic cooperation between the two countries, and intending to actively create favorable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party, through the negotiations between the representatives of the two Governments, have agreed as follows;

## **Article 1.**

For the purpose of this Agreement:

1. The term "investments" means every kind of asset permitted by either Contracting Party in accordance with its laws and regulations including in particular:

- (a) Movable and immovable property and any other rights in rem, such as mortgages and pledges;
- (b) Shares of companies and the other forms of interests in such companies;
- (c) Claims to money that create an economic value or claims to any performance that have an economic value;
- (d) Copyrights, industrial property rights, technical processes, knowhow, trademarks and trade names, and
- (e) Concessions including concessions for prospection, exploitation and extraction.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

2. The term "returns" means profits, dividends, interest and other legitimate income yielded by an investment for a definite period.

3. The term "investors" means in respect of the People's Republic of China,

- (a) Natural persons having the nationality of the People's Republic of China;
- (b) Companies, enterprises or other economic entities approved, by the Chinese Government, registered and entitled to undertake economic cooperation with foreign countries.

In respect of the Federal Republic of Germany,

- (a) Germans domiciled within any area to which this Agreement effectively applies;
- (b) Juridical persons and commercial or other companies or associations established in accordance with the law and domiciled in any area to which this Agreement effectively applies, regardless of whether they are in possession of a legal person status or not, or whether their shareholders or participants are of limited liability or not, or whether they are profit-making or not.

## **Article 2.**

Either Contracting Party shall in its territory promote investment by investors of the other Contracting Party, permit such investments in accordance with its laws and regulations, and accord such investments, at all times, equitable and reasonable treatment.

## **Article 3.**

1. Neither Contracting Party shall in its territory accord the investments by investors of the other Contracting Party treatment that is less favorable than that accorded to investments by investors of any third country with which the former Contracting Party has concluded a similar agreement.
2. Neither Contracting Party shall in its territory accord the activities associated with investments of investors of the other Contracting Party treatment less favorable than that accorded to the activities associated with investments of the investors of any third country with which the former Contracting Party has concluded a similar agreement.
3. The treatment as mentioned in paragraphs 1 and 2 above shall not apply to
  - (a) Any advantages accorded to investors of a third country by one Contracting Party based on existing Customs union, free trade area or an economic union;
  - (b) Any advantages accorded to investors of a third country by one Contracting Party based on an agreement for the avoidance of double taxation or agreements pertaining to taxation;
  - (c) Any advantages accorded to investors of a third country on the basis of facilitating frontier trade.
4. Either Contracting Party shall guarantee not to take discriminatory measures against the joint ventures and wholly-owned enterprises by the investors of the other Contracting Party without prejudice to the legislation concerning those joint ventures with foreign equity participation and foreign wholly-owned enterprises.

#### **Article 4.**

1. Investments by investors of either Contracting Party shall enjoy protection as well as security in the territory of the other Contracting Party. Expropriation by one Contracting Party of the investments of the investors of the other Contracting Party in its territory can be taken only when such an action is in public interests, undertaken according to the legal procedure and against compensation. The compensation shall be made in a convertible currency, freely transferable and paid without undue delay.
2. In the event investors of one Contracting Party suffer losses in respect of the joint ventures in which they have participated in the territory of the other Contracting Party due to war or other armed conflict or a state of national emergency or other similar incidents, the latter Contracting Party shall not take discriminatory measures, if any.
3. The investors of either Contracting Party shall enjoy the most-favored-nation treatment in the territory of the other Contracting Party in respect of the matters provided in this Article.

#### **Article 5.**

Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer of the following proceeds related to their investments, mainly:

- (a) Capital or additional funds that are needed to maintain the operation of or to increase the investment itself;
- (b) Returns;
- (c) Repayment of loans;
- (d) Royalties and other fees derived from the rights as defined in section (d), paragraph 1 of Article 1 in this Agreement; section (d), paragraph 1 of Article 1 in this Agreement;
- (e) Liquidated amounts from the total or partial assignment of the investment.

#### **Article 6.**

If a Contracting Party makes payment to its investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party the latter Contracting Party shall, without prejudice to the rights of the Contracting Party under Article 10, recognize the assignment, under the laws or pursuant to a legal action, of any rights or claims of the investor to the former Contracting Party as well as the subrogation of the former Contracting Party to such rights or claims assigned to it. However, the rights of claims subrogated by the former Contracting Party shall not exceed the original rights or claims of such investor. The latter Contracting Party can make counter-claims to the rights or claims subrogated by the former Contracting Party. As regards the transfer of payments to be made to the former Contracting Party by virtue of such

claim assignment provisions of Articles 4 and 5 shall apply respectively.

## **Article 7.**

1. In the absence of approval given by the competent authority of the Contracting Party accepting the investment to other arrangements between the parties concerned, the transfer mentioned in Articles 4, 5 or 6 of this Agreement shall be made in the currency agreed upon by the parties concerned at the effective rate of exchange prevailing on the date of the transfer and without undue delay.

2. The rate of exchange mentioned above shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

## **Article 8.**

1. If the legislation of either Contracting Party or obligations undertaken under international law existing at present or established hereafter between the Contracting Parties other than this Agreement contain provisions whether general or specific, entitling investments by investor of the other Contracting Party to a treatment which is more favorable than that provided for in this Agreement, such provisions shall prevail.

2. Each Contracting Party shall observe any other obligation it may have entered into with investors of the other Contracting Party in respect of investments in its territory. However, the rights of either Contracting Party to revise its laws shall not be impaired.

## **Article 9.**

The Agreement shall also apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations since 1st July, 1979.

## **Article 10.**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

2. If such a dispute cannot thus be settled within six months it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted ad hoc as follows; each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as the Chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and the Chairman within three months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal. ad hoc as follows; each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as the Chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and the Chairman within three months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If, within the periods specified in paragraph 3 above, appointments have not been made, either Contracting Party may, in the absence of any other arrangement, invite the Secretary-General of the United Nations to make any necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision on the basis of this Agreement, other agreements concluded between the Contracting Parties and the general principles of international law. Such decision shall be made by a majority vote, be final and binding.

6. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

7. The arbitral tribunal shall be the one to determine its own procedure.

## **Article 11.**

This Agreement shall remain in force also in the event of a conflict arising between the Contracting Parties without Prejudice to the right to take such temporary measures as are permitted under the general principles of international law. Such measures shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations exist.

## **Article 12.**

This Agreement shall also apply to Berlin (West) under the situation existing.

## **Article 13.**

1. The present Agreement shall enter into force one month from the date on which the Contracting Parties have informed each other in writing that the necessary procedures required for its implementation are in place in their respective countries. Shall remain in force for a period of ten years and shall continue to be in force in the absence of a written notification by either Contracting Party twelve months before its expiration. After the expiry of the ten-year period, the present Agreement may be terminated at any time by either Contracting Party after one year's notice has been given.

2. In respect of investments made prior to the date of termination of the present Agreement, the provisions of Articles 1 to 12 shall remain effective for a further period of fifteen years from the date of termination of this Agreement.

For the People's Republic of China

Chen Muhua

For the Federal Republic of Germany

Schödel

Graf Lambsdorff

## **Protocol**

At the time of the signing of the agreement between the People's Republic of China and the Federal Republic of Germany on the promotion and mutual protection of investment, the signing representatives authorized by both parties agreed on the following as part of this agreement:

### 1. Ad Article 1

a) Income from the investment and, in the event of its reinvestment, the income thereof also enjoy the same protection as the investment.

b) Whoever holds a national travel passport issued by the competent authority of either Contracting Party shall be deemed to be a national of that Contracting Party.

### 2. Ad Article 2

Investments made by investors of the other Party in accordance with the laws of one Party within the scope of its legal system enjoy the full protection of this Agreement.

Investments made in accordance with the laws of a Contracting Party by investors in the areas in which the former Contracting Party exercises sovereign rights or sovereignty also enjoy the full protection of this Agreement.

### 3. Ad Article 3

a) The "treatment" referred to in Article 3(2) is in particular on the management, use, application and exploitation of a capital investment.

b) A "less favourable treatment" within the meaning of Article 3(2) or a "discriminatory measure" within the meaning of Article 3(4) shall mean in particular: a restriction on the purchase of raw materials and consumables, energy and fuels, production and operating resources and other measures having a similar effect.

Measures taken by one Party on the basis of the respective priorities of its economy shall not be considered as "discriminatory measures", provided that they are not specifically directed against investors of the other Party or against joint ventures involving investors of the other Party.

c) Measures taken by a Party for reasons of public policy, public security, public health or morality shall not be considered "discriminatory measures".

d) The Contracting Parties shall, within the framework of their national legislation, give favourable consideration to applications for entry and residence of persons of one Contracting Party wishing to enter the territory of the other Contracting Party in connection with the making and transit of an investment, in the same way as workers of one Contracting Party wishing to enter and stay in the territory of the other Contracting Party in connection with an investment in order to engage in an activity as workers. Applications for work permits will also be examined favourably.

e) The provisions of Article 3 do not oblige a contracting party to extend to natural persons and companies established in the territory of the other contracting party tax benefits, exemptions and concessions granted only to natural persons and companies established in its territory in accordance with the tax laws.

#### 4. Ad Article 4

a) "Expropriation" as referred to in Article 4, paragraph 1, of this Agreement also includes nationalization and other measures that have the same effect as expropriation or nationalization.

b) If, in the opinion of the investor, the expropriation referred to in Article 4(1) is not in conformity with the law of the Contracting Party which took the expropriation measure, the lawfulness of the expropriation shall, at the request of the investor, be reviewed by the competent courts of the Contracting Party which took the expropriation measure.

c) The compensation referred to in Article 4(1) must correspond to the value of the expropriated investment immediately before the date on which the expropriation became public knowledge. The investor and the other Contracting Party shall hold consultations for the purpose of determining this value.

If no agreement has been reached within six months of the commencement of the consultations, the amount of the compensation shall, at the request of the investor, be reviewed either by the competent courts of the Party which took the expropriation measure or by an international arbitral tribunal.

d) The international arbitral tribunal referred to in subparagraph (c) shall be constituted on a case-by-case basis, each side appointing one member and both members agreeing on the nationals of a third State with which both Parties have diplomatic relations. The members are to be appointed within two months, the chairman within three months, after one side has informed the other that it wishes to submit the differences of opinion to an arbitral tribunal.

In the absence of any other agreement, either party may ask the President of the International Arbitral Tribunal at the Stockholm Chamber of Commerce to make the necessary appointments if the time limits referred to in paragraph 1 have not been observed.

The arbitration shall be determined by the arbitral tribunal itself in accordance with the Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States. The Court shall give its decision by a majority vote; the decision shall be final and binding; it shall be enforced in accordance with national law. The judgment shall state the basis on which it was given and shall be reasoned at the request of either party.

Each party shall bear the expenses of its member and its representative in the arbitration; the expenses of the umpire and other expenses shall be borne equally by both parties.

e) In the circumstances described in Article 4, paragraph 2, investment-related activities shall be continued as far as possible.

#### 5. Ad Article 5

a) The payments referred to in Article 5(a) shall be deemed to be repayments of capital and additional sums to maintain and expand the capital investment in accordance with the agreements concluded between the parties.

b) The term "loan" as referred to in Article 5 (3) of this Agreement refers to a loan of similar participation provided by an investor.

c) The expression "Each Party shall ensure to the investors of the other Party the free transfer of payments related to investments" in accordance with Article 5 means, in relation to the People's Republic of China:

Under the foreign exchange provisions of the People's Republic of China in force at the time of signature of this Agreement, payments referred to in Article 5 shall be transferred abroad from the foreign exchange account of the common enterprise or from the foreign exchange account of the enterprise with exclusively foreign capital.

d) When the joint venture or foreign-funded enterprise does not have sufficient foreign exchange for the payments referred to in subparagraph (c) of this Protocol, the Chinese Government shall make available the foreign exchange necessary for the transfer in the following cases:

aa) Payments referred to in Article 5 (1), (4), (5) of this Agreement;

bb) The payment referred to in Article 5 (3) of this Agreement where the Bank of China has provided a guarantee;

cc) For the payment referred to in Article 5 (2) of this Agreement, if the competent governmental authority has authorized the joint venture or foreign-funded enterprise to sell its products as non-convertible currencies.

## 6. Ad Article 7

For the purposes of Article 7(1), 'without undue delay' means a transfer effected within a period of time normally necessary to comply with the transfer formalities. The period shall begin with the filing of a corresponding request and shall not exceed three months in the cases referred to in Article 5 and six months in the cases referred to in Article 4 and Article 6.

7. When transporting goods and persons in connection with the execution of capital investments, the Contracting Parties shall neither eliminate nor hinder the transport companies of the other Contracting Parties. The investor has the right to freely choose the transport company. This includes transportation of:

a) Goods which are directly intended for investment within the meaning of this Agreement or which are acquired in the territory of a Contracting Party or of a third State by or on behalf of an undertaking in which assets are invested as capital investments within the meaning of this Agreement;

b) Persons travelling in connection with the investment of capital.

Done at Beijing, on 7 October 1983, in two original texts, each in the German and Chinese languages, each text being equally authentic.

For the Federal Republic of Germany

Schödel

Graf Lambsdorff

For the People's Republic of China

Chen Muhua

## **Exchange of letters**

His Excellency Mr. Günter Soder, Ambassador Extraordinary and Plenipotentiary of the Federal Republic of Germany to the People's Republic of China

Your Excellency:

I am honored to receive your letter of October 7, 1983, which reads as follows:

"At the conclusion of the negotiations between the Federal Republic of Germany and the People's Republic of China on the promotion and mutual protection of investments, I have the honour to inform you of the following:

The Contracting Parties agree that when both parties become parties to the Convention on the Settlement of Investment Disputes between Nationals of Other Countries and Other Countries, which was signed in Washington on March 18, 1965, the parties will hold negotiations to conclude an agreement on what kind of dispute between an investor of one party and the other contracting party and how to request the International Center for the Settlement of Investment Disputes for mediation or arbitration in accordance with the provisions of the Convention, make a supplementary agreement, and form part of this agreement.

I would appreciate it if Your Excellency confirmed the above. "

I have the honour to confirm on behalf of the People's Republic of China that I agree with the content of the above letter.

Sincerely, with the highest respect.

Member of the State Council of the People's Republic of China

Minister of Foreign Economy and Trade

Chen Muhua

(signature)

Beijing, October 7, 1983

His Excellency Mr. Günter Soder, Ambassador Extraordinary and Plenipotentiary of the Federal Republic of Germany to the People's Republic of China

Your Excellency:

I am honored to receive your letter of October 7, 1983, which reads as follows:

"At the conclusion of the negotiation of the agreement between the Federal Republic of Germany and the People's Republic of China on the promotion and mutual protection of investments, I have the honour to inform you of the following:

After the fourth round of negotiations on the investment protection agreement held in Bonn in July 1983, the two delegations continued their talks in Beijing on the remaining issues through diplomatic channels and reached consensus on all the terms of the agreement. The two sides reached the following understanding:

The lawfulness of a tax is examined by a court of competent jurisdiction of the contracting party taking the tax, but this does not preclude the application of the procedures of Article 10 in the event of a dispute between the contracting parties over the interpretation or application of this Agreement. "

Sincerely, with the highest respect.

Member of the State Council of the People's Republic of China

Minister of Foreign Economy and Trade

Chen Muhua

(signature)

Beijing, October 7, 1983