

# Agreement

## Between the Government of the French Republic and the Government of the Republic of China on the encouragement and reciprocal protection of investments

The Government of the French Republic and the Government of the Republic of China, hereinafter referred to as the contracting parties, "

Desiring to enhance economic cooperation between the two States and create favorable conditions for investments in China and France in Chinese, France

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the intcrêt of their economic development,

Have agreed as follows:

### Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets invested by investors of one Contracting Party in the territory or maritime zones of the other contracting party, such as property rights and interests of any kind, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits, guarantees and any other similar rights;
- b) Actions and issuance of awards and other forms of participation, even indirect minority, or to companies established in the territory of one of the contracting parties;
- c) The obligations and rights, claims to any performance having economic value;
- d) Intellectual property rights, such as commercial and industrial, including but not limited to, copyrights, patents, trademarks, trade names, know-how and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources, including those that are in the maritime area of the Contracting Parties.

It is understood that iesdits assets must be or have been invested in accordance with the law of the Contracting Party before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party.

2. The term investor means:

- a) Nationals, i.e. natural persons having the nationality of one of the contracting parties;
- b) Any juridical person in the territory of one of the Contracting Parties in accordance with its law and having its registered office or directly or indirectly controlled by nationals or juridical persons of one of the Contracting Parties.

Are treated as legal persons within the meaning of this article, companies on the one hand, and non-profit organizations with legal personality.

3. The term means all amounts yielded returns by an investment interests, such as profits, royalties or during a period of time.

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

4. The term "Maritime Zones" means of marine and submarine areas over which the contracting party exercises, in accordance with international law, sovereign, sovereign rights or jurisdiction.

## **Article 2. Promotion and Admission of Investments**

Each Contracting Party shall promote and admit, within the framework of its laws and the provisions of this Agreement, the investments of investors of the other contracting party in its territory and in the maritime area.

## **Article 3. Fair and Equitable Treatment**

Each Contracting Party undertakes to provide in its territory and in the maritime area to investments made by investors of the other contracting party fair and equitable treatment in accordance with generally recognized principles of international law.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, labour and movement of nationals of either Contracting Party in respect of an investment in the territory or maritime zones of the other contracting party.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

Without prejudice to its laws and regulations, each Contracting Party shall in its territory and in the maritime area to investors of the other contracting party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its investors.

Nationals who are authorised to work in the Territory and in the maritime area of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities.

Each Contracting Party shall in its territory and in the maritime area to investors of the other contracting party as regards their investments and activities associated with such investments, the treatment accorded to investors of the most favoured nation.

This treatment does not extend to the privileges which one of the Contracting Parties accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization.

The provisions of this article shall not be construed so as to oblige one contracting party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege of any kind by virtue of a double taxation agreement or any other agreement of a fiscal nature.

Nothing in this article shall not be construed so as to prevent a Contracting Party from taking any measures to regulate the investments made by investors and the conditions for the exercise of the activities of investors, within the framework of measures to preserve and promote cultural and linguistic diversity.

## **Article 5. Dispossession and Compensation**

1. Investments made by investors of either Contracting Party in the Territory and in the maritime zones of other contracting party to the protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measure the purpose of which is to dispossess, directly or indirectly, an investor of the other contracting party of their investments in its territory and in the maritime area, except for a public purpose and provided that such measures are not discriminatory.

Any measure of dispossession which might be taken shall take place without delay in payment of compensation. the amount of such compensation shall be equivalent to the real value of the investment concerned and must be assessed in relation to a normal economic situation and prior to any threat of dispossession.

Such compensation, its amount and has no later than the date of dispossession. compensation shall be paid without delay, and effectively realisable freely transferable. it produces until the date of payment, shall include interest at the market rate of interest as appropriate.

3. Investors of one Contracting Party whose investments have suffered pearls due to a war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other Contracting Party shall enjoy the latter part of this treatment no less favourable than that it accords to its own investors or to those of the most favoured nation.

## **Article 6. Free Transfers**

Each Contracting Party in the territory or maritime area which investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in Article 1 paragraph 1 (d) and (e);
- c) Payments made for the reimbursement of loans contracted regularly;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation of dispossession or loss as provided for in article 5, paragraphs 2 and 3.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the market rate of exchange applicable on the territory of the Contracting Party accepting the investment and in effect on the date of transfer in accordance with the procedures laid down by the legislation of the Contracting Party in question, provided that such procedures shall not prevent the free transfer, suspend or alter the nature.

In respect of the Republic of China, the transfer shall be effected in accordance with the procedures established by its laws and regulations applicable in the countries of exchange controls in force on the date of transfer.

If, in exceptional circumstances, the movement of capital to or from third countries cause or threaten to cause a serious imbalance in the balance of payments, each Contracting Party may apply temporarily safeguard measures with regard to transfer, provided that such measures are strictly necessary, applied on an equitable, non-discriminatory basis and in good faith and that they do not in any case exceed a period of six months.

The provisions of the preceding paragraphs of this article does not preclude the exercise in good faith by a contracting party of its international obligations or rights and obligations membership or association with a free trade area, customs union, common market, to an Economic and Monetary Union or any other form of regional cooperation or integration.

## **Article 7. Settlement of Disputes between an Investor and a Contracting Party**

Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute cannot be settled within six months from the date on which it was raised by either party to the dispute, it shall be submitted at the request of the investor:

- a) The competent court of the Contracting Party or party to the dispute;
- b) Arbitration to an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), subject to the right of the Contracting Party which is a party to the dispute may request the investor concerned to use the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the dispute is submitted to arbitration; or
- c) To arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965, subject to the right of the Contracting Party which is a party to the dispute may request the investor concerned to use the

domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the dispute is submitted to ICSID.

Once the investor has submitted the dispute to the competent court of the Contracting Party concerned, to arbitration to an ad hoc arbitral tribunal established in accordance with the rules of the UNCITRAL or to arbitration by the ICSID.

The choice of one of the procedures shall be final.

The arbitral award shall be final and binding on both parties to the dispute. the Contracting Parties undertake to implement it.

## **Article 8. Guarantees and Subrogation**

1. If the legislation of either contracting party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by investors of that Party in the territory or maritime zones of the other party.

2. Investments made by investors of one Contracting Party in the territory or maritime zones of the other contracting party cannot obtain the security referred to in the preceding paragraph only if they ont. previously obtained accreditation of that other party.

3. If one of the Contracting Parties, by virtue of a guarantee granted to an investment made in the territory or maritime zones of the other contracting party, makes payment to one of its investors it is thereby entered into the rights and claims of the investor.

4. Such payments shall not affect the rights of the holder of the security to resort to the dispute settlement procedures set out in article 7 or to carry out the measures introduced before they until the completion of the procedures.

## **Article 9. Specific Commitments**

Investments which have been the subject of a particular undertaking of either Contracting Party to the investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable than those of this Agreement. the provisions of article 7 of this Agreement shall apply even where the waiver specific commitment to international arbitration or designating a Court of Arbitration other than that referred to in article 7 of this Agreement.

## **Article 10. Settlement of Disputes between Contracting Parties**

1. Disputes concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If, within a period of six months from the date on which it was raised by either contracting party, the dispute is not settled, it may be submitted at the request of either contracting party to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement a national of a third State who shall be appointed Chairman of the Tribunal by both contracting parties. all members shall be appointed within two months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.

4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to make the necessary appointments. if the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.

5. The tribunal shall reach its decisions by a majority of votes. such decisions shall be final and enforceable automatically to the contracting parties.

The tribunal shall determine its own rules of procedure. it interprets the award at the request of either Contracting Party. unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the contracting parties.

## **Article 11. Transitional Provision**

This agreement repeals and replaces the Agreement on the encouragement and reciprocal protection of investments between the Government of the French Republic and the Government of the Republic of China's people signed at Paris on 30 May 1984.

This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party, whether made before or after its entry into force, but shall not apply to any dispute or any claim concerning an investment which have already been subjected to judicial or arbitral proceedings before its entry into force.

Such disputes and complaints will continue to be resolved in accordance with the provisions of the Agreement in 1984 referred to in paragraph 1 of this article.

## **Article 12. Entry Into Force and Termination**

Each Party shall notify the other of the completion of the legal procedures necessary for the entry into force of this Agreement, which will effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Contracting Parties denounces it in writing on one year's notice through diplomatic channels.

On expiration of the period of validity of the present Agreement investments made during that it was in force will continue to benefit from the protection of its provisions for an additional period of 20 years.

In WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Signed in Beijing 26.11.2007, in duplicate in the Chinese and French languages, both texts being equally authentic.

For the Government of the French Republic

Mme. Christine Lagarde

Minister of Economy, Finance and Work

For the Government of the People's Republic of China

M. Yu Guangzhou

Vice-Minister of Commerce