

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF MALTA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

Intending to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the reciprocal encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of investors and will increase prosperity in both States;

Desiring to intensify the cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1 . The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) Movable and immovable property and other rights such as mortgages, hypothecs, privileges, usufructs, sureties or pledges;

(b) Shares, debentures, stock and any other kind of participation in companies;

(c) Claims to money or to any other performance having an economic value associated with an investment;

(d) Intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, industrial designs, technical process, know-how and good-will and other similar rights;

(e) Franchises or business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, 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 change is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

2 . The term "investor" means:

(a) Natural persons who have the nationality of either Contracting Party in accordance with the laws of that Contracting Party; or

(b) Legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of either Contracting Party that have their seat or registered office in that Contracting Party.

3 . The term "return" means the amounts yielded from investments, and in particular, though not exclusively includes profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

4 . The term "territory" means:

i) With respect to the People's Republic of China; all the territory of the People's Republic of China, including its territorial sea and any maritime areas beyond the territorial sea that, in accordance with international law and its domestic law, China exercises sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources thereof.

ii) With respect to Malta, the territory of Malta as well as those maritime areas including the airspace, the seabed and subsoil adjacent to the outer limit of the territorial sea of the above territory, over which Malta exercises in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation of natural resources.

Article 2. Promotion and Protection of Investment

1 . Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2 . Investments of either Contracting Party shall be made, and shall, for their whole duration, continuously be in line with the respective domestic laws. Investments shall enjoy the constant protection and security in the territory of the other Contracting Party.

3 . Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management maintenance, use, enjoyment and disposal of investments by investors of the other Contracting Party.

Article 3. National Treatment and Most-favoured Nation Treatment

1 . Investments by investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

2 . Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favourable than that accorded to investments and associated activities by its own investors.

3 .

(a) Neither Contracting Party shall in its territory subject investments and activities associated with such investments by the investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments to treatment less favourable than that which it accords to investments and associated activities by investors of any third State.

(b) If a Contracting Party has accorded special advantages to investors of any third State by virtue of its membership, in or association with a free trade area, customs union, common market, regional economic integration organisation, any arrangements for facilitating small scale frontier trade in border areas or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

(c) The treatment granted under the present article shall not extend to taxes, fiscal deductions and exceptions granted by either Contracting Party to investors of third States by virtue of a double taxation agreement or other agreements regarding taxation matters.

4 . Subject to its laws and regulations, each Contracting Party shall facilitate the entry and sojourn of investors of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

Article 4. Expropriation

1 . Neither Contracting Party shall expropriate, nationalise or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless such measures are taken:

(a) For the public interests;

(b) Under domestic legal procedure;

(c) Without discrimination

(d) Against adequate compensation.

2 . The adequate compensation mentioned in Paragraph 1 of this Article shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognised principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date

of payment. The compensation shall also be made without delay, be effectively realisable and freely transferable. Paragraph 1 of this Article shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognised principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall also be made without delay, be effectively realisable and freely transferable.

3 . The Most Favoured Nation treatment shall apply to expropriation of investments in the case of investors of either Contracting Party in the territory of the other Contracting Party.

4 . Where a Contracting Party expropriates the assets of a company established in its territory, the company in which investors of the other Contracting Party own shares, the former Contracting Party shall apply the provisions of paragraphs 1, 2, and 3 of this Article, to the investors of the other Contracting Party who own these shares. paragraphs 1, 2, and 3 of this Article, to the investors of the other Contracting Party who own these shares.

Article 5. Compensation for Damages and Losses

Subject to Article 3(3b), investors of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation and other settlements no less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

Article 6. Transfers

1 . Each Contracting Party shall subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:

- (a) Profits, dividends, interests and other legitimate income;
- (b) Proceeds obtained from the total or partial sale or liquidation of investments;
- (c) Payments made pursuant to a loan agreement in connection with investments;
- (d) Royalties in relation to the matters in Paragraph 1 (d) of Article 1; Paragraph 1 (d) of Article 1;
- (e) Payments of technical assistance fees and management fees;
- (f) Payments in connection with contracting projects; and
- (g) Earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.

2 . Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement. Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement.

3 . The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

Article 7. Subrogation

1 . If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

- (a) The assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,
- (b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

2 . As regards the transfer of payments made by virtue of such assignment of claims, Article 6 shall apply mutatis mutandis. Article 6 shall apply mutatis mutandis.

Article 8. Disputes between the Contracting Parties

- 1 . Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channels.
- 2 . If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to arbitration proceedings under the UNCITRAL Arbitration Rules.
- 3 . The arbitral tribunal shall be comprised of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall in turn, within two months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.
- 4 . If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.
- 5 . The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognised by both Contracting Parties.
- 6 . The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.
- 7 . Each Contracting Party 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 Contracting Parties.

Article 9. Settlement of Disputes between an Investor and a Host State

- 1 . The Contracting Parties shall endeavour to assist in the settlement of any investment disputes regulated by this Agreement between one of the Contracting Parties and an investor of the other Contracting Party by means of a friendly settlement. Any such disputes shall be adopted in writing, including detailed information, by the investor at the same time to both Contracting Parties.
- 2 . If the dispute cannot be settled through negotiations within six months from the date of the written notification of the dispute, it shall be submitted by the choice of the investor:
 - (a) To the competent court of the Contracting Party that is a party to the dispute;
 - (b) To International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18,1965,Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18,1965,
 - (c) To an ad hoc international arbitration according to the Arbitration Rules of the United Nations Commission on International Trade Law.Arbitration Rules of the United Nations Commission on International Trade Law.Once the investor has submitted the dispute to the international tribunals, the choice of one of the procedures shall be final.
- 3 . Notwithstanding paragraph 2:paragraph 2:
 - a) With respect to People's Republic of China, the investor concerned may only submit the dispute to international arbitration under the following circumstances:
 - (i) That the investor has gone through the administrative review procedures according to the laws of People's Republic of China and the dispute remains; and
 - (ii) The dispute has not been submitted to a court of the People's Republic of China; and
 - b) With respect to Malta the investor concerned shall submit the dispute to a domestic court, tribunal or arbitration so as to exhaust the local procedures before proceeding to international arbitration.
- 4 . For the purpose of paragraphs 2 and 3, each Contracting Party gives its advance and irrevocable consent to submit the

dispute to international arbitration. paragraphs 2 and 3, each Contracting Party gives its advance and irrevocable consent to submit the dispute to international arbitration.

5 . The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognised by both Contracting Parties.

6 . The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

Article 10. Other Obligations

1 . If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties result in a position entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the Agreement, such position shall not be affected by this Agreement.

2 . Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party with respect to their investments.

Article 11. Application

This Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreements shall not apply to disputes that have arisen before its entry into force.

Article 12. Consultations

1 The representatives of the Contracting Parties shall hold meetings from time to time for the purpose of, but not limited to:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging information on legal matters and investment opportunities;
- (c) Resolving disputes arising out of investments;
- (d) Forwarding proposals on the promotion of investments; and
- (e) Studying other issues in connection with investments.

2 . Where either Contracting Party requests consultation on any matter related to Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation shall be held alternatively in Malta and the People's Republic of China. Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation shall be held alternatively in Malta and the People's Republic of China.

Article 13. Entry Into Force, Duration and Termination

1 . The Contracting Parties shall notify each other of the completion of their respective legal procedure for the entry into force of the Agreement in writing. The Agreement shall enter into force on the first day of the following month after the date of the later notification and shall remain in force for a period of ten years.

2 . This Agreement shall not prejudice the right of either Contracting Party to amend in whole or in part or to terminate this Agreement at any time during its period of currency.

3 . This Agreement shall be automatically renewable for successive periods of ten years unless either Contracting Party has given a written notice to the other Contracting Party to terminate this Agreement before the expiration of the initial ten year period or at any time thereafter.

4 . For the purposes of this Agreement, a written notice in terms of this Article shall be served through diplomatic channels six months before the termination.

5 . This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of the present Agreement.

6 . In respect of investments made before the date of the amendment or termination of this Agreement in accordance with

this Article the foregoing provision of the present Agreement shall continue to apply for a period of ten (10) years from that date.

Done in duplicate at _____ on _____, in Chinese and English , _____ languages, all texts being equally authentic.

For the Government of The People's Republic of China

For the Government of Malta