

# Agreement on Mutual Protection of Investments Between the Government of the Kingdom of Sweden and the Government of the Peoples Republic of China

The Government of the People's Republic of China and the Government of the Kingdom of Sweden, desiring to maintain fair and equitable treatment of investments by investors of one Contracting State in the territory of the other Contracting State,

Have agreed as follows:

## Article 1.

For the purpose of this Agreement:

(1) The term "investment" shall comprise every kind of asset invested by investors of one Contracting State in the territory of the other Contracting State in accordance with the laws and regulations of that State, and more particularly, though not exclusively,

(a) Movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares or other kinds of interest in companies;

(c) Title to money or any performance having an economic value;

(d) Copyrights, industrial property rights, technical processes, trade-names and good-will; and

(e) Such business-concessions under public law or under contract, including concessions regarding the prospecting for, or the extraction or winning of natural resources, as give to their holder a legal position of some duration.

(2) The term "investor" shall mean:

In respect of the People's Republic of China, any company, other legal person or citizen of China authorized by the Chinese Government to make an investment;

In respect of Sweden, any individual who is a citizen of Sweden according to Swedish law well as any legal person with its seat in Sweden or with a predominating Swedish interest.

## Article 2.

(1) Each Contracting State shall at all time ensure fair and equitable treatment to the investments by investors of the other Contracting State.

(2) Investments by investors of either Contracting State in the territory of the other Contracting State shall not be subjected a treatment less favourable than that accorded to investments by investors of third States.

(3) Notwithstanding the provisions of paragraph (2) of this Article, a Contracting State, which has concluded with one or more other States an agreement regarding the formation of a customs union or a free-trade, shall be free to grant a more favourable treatment to investments by investors of the State or States, which are also parties to the said agreement, or by investors of some of these States. A Contracting State shall also be free to grant a more favourable treatment to investments by investors of other States, if this is stipulated under bilateral agreement concluded with such States before the date of the signature of this Agreement.

## Article 3.

(1) Neither Contracting State shall expropriate or nationalize, or take any other similar measure in regard to, an investment made in its territory by an investor of the other Contracting State, except in the public interest, under due process of law and against compensation, the purpose of which shall be to place the investor in the same financial position as that in which the investor would have been if the expropriation or nationalization had not taken place. The expropriation or nationalization shall not be discriminatory and the compensation shall be paid without unreasonable delay and shall be convertible and freely transferable between the territories of the Contracting States.

(2) The provisions of paragraph (1) shall also apply to the current income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

#### **Article 4.**

Each Contracting State, subject to its laws and regulations, allow without undue delay the transfer in any convertible currency of:

- (a) The net profits, dividends, royalties, technical assistance and technical service fees, Interest and other current income, accruing from any investment by an investor of the other Contracting State;
- (b) The proceeds of the total or partial liquidation of any investment by an investor of the other Contracting State;
- (c) Funds in repayment of borrowings which both Contracting States have recognized as investment; and
- (d) The earnings of nationals of the other Contracting States who are allowed to work in connection with an investment in its territory.

#### **Article 5.**

If a Contracting State makes a payment to an investor under a guarantee it has granted in respect of an investment in territory of the other Contracting State, that Contracting State shall, without prejudice to the rights of the former Contracting State under Article 6, recognize the transfer of any right or title of such investor to the former Contracting State and the subrogation of the former Contracting State to any such right or title. The subrogation shall concern the claim of the investor from which shall be deducted any debts which the investor may have to the other Contracting State.

#### **Article 6.**

- (1) Disputes between the Contracting States concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Government of the two Contracting States.
- (2) If the dispute cannot thus be settled it shall, upon the request of either Contracting state, be submitted to an arbitral tribunal.
- (3) Such arbitral tribunal shall be established in each individual case, each Contracting State appointing one member, and those two members shall then agree upon a national of a third State as their Chairman to be appointed by the Government of the two Contracting States. Such members shall be appointed within two months, and such Chairman within three months, after either Contracting State has made known to the other Contracting State that it wished the dispute to be submitted to an arbitral tribunal.
- (4) If the periods specified in paragraph (3) have not been observed, either Contracting State may, in the absence of any other relevant arrangement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Under Secretary-General for Legal Affairs shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes, Such decisions shall be binding. Each Contracting State shall bear the cost of its own member and of its counsel in the arbitral proceedings, the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

#### **Article 7.**

Nothing in this Agreement shall prejudice any rights or benefits accruing under national or international law to interests of a national or a company of one Contracting State in the territory of the other Contracting State.

## **Article 8.**

This Agreement shall apply to all investments made after July, 1, 1979.

## **Article 9.**

(1) This Agreement shall enter into force immediately upon signature.

(2) This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fourteen years, either Contracting State notifies in writing the other Contracting State of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 8 shall remain in force for a further period of fifteen years from that date.

Done in Beijing on March 29, 1982, in two originals in the Swedish, Chinese and English languages, all texts being equally authentic.

For the Government of Sweden:

Sten Sundfeldt

For the Government of the People's Republic of China

Wei Yuming

Beijing, March 29, 1982

Your Excellency:

On the occasion of the signing of the agreement between the Government of the Kingdom of Sweden and the Government of the People's Republic of China on the mutual protection of investments, I have the honor to refer to the following understanding reached between our two delegations during the negotiations.

As the People's Republic of China has not acceded the Washington Convention of March 18, 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, the delegations found it impossible to include in the agreement any provision covering the settlement of disputes between a contracting State and an investor from other Contracting State. The delegations were, however in agreement that, in the event that the People's Republic of China should in future accede to the Washington Convention the agreement will be supplemented with a supplementary agreement on a binding system for the settlement of dispute within the framework of the International Centre for Settlement of Investment Disputes.

The Swedish Government accepts this understanding,

I should be grateful to receive your assurance that this understanding can also be accepted by the Government of the People's Republic of China.

(s) Ambassador of Sweden Sten Sundfeldt

Vice Minister Wei Yuming

Ministry for Economic Affairs and Trade with Other Countries

Beijing

Deputy Minister of the Ministry of Economic Relations and Trade with other countries in Beijing to Sweden's ambassador to Beijing

Beijing, March 29, 1982

Your Excellency,

I hereby acknowledge receipt of your letter received today, the translation content of which reads as follows:

"The signature of the agreement is also approved by the Government of the People's Republic of China."

On behalf of the People's Republic of China, I have the honor to confirm that there is agreement on the content of the above-published letter.

Receive the assurance of my highest consideration.

Wei Yuming

## **PROTOCOL**

Amendment to the Agreement on Mutual Protection of Investments Between the Government of the Kingdom of Sweden and the Government of the Peoples Republic of China of March 29, 1982

The Government of the Kingdom of Sweden and the Government of the Peoples Republic of China have agreed on the following:

### **1.**

The Agreement on Mutual Protection of Investments Between the Government of the Kingdom of Sweden and the Government of the Peoples Republic of China of March 29, 1982 shall be amended by a new Article 6 bis with the following wording:

#### **Article 6 bis**

(1) Any dispute concerning an investment between an investor of one Contracting State and the other Contracting State shall, if possible, be settled amicably.

(2) An investor may decide to submit a dispute to a competent domestic court of the Contracting State in whose territory the investment is made. The investor may nevertheless have access to international dispute settlement on the condition that the investor has withdrawn its case from the domestic court before a final judgement has been delivered on the subject matter.

(3) If a dispute referred to in paragraph 1 of this Article cannot be settled amicably within three (3) months following the date on which the dispute was raised by the investor through written notification, each Contracting State hereby consents to the submission of the dispute, at the investors choice, for resolution by international arbitration to one of the following fora:

(i) the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, or

(ii) an ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The Peoples Republic of China, when acting as a Contracting State involved in a dispute, may require the investor concerned to exhaust the domestic administrative review procedure specified by the laws and regulations of the Peoples Republic of China before submission of the dispute to the arbitration procedures stipulated in paragraph 3. The domestic administrative review procedure shall not exceed three (3) months from the day of acceptance of the application for the administrative review procedure.

Recourse to the domestic administrative review procedure does not prevent the investor from submitting the dispute for resolution by international arbitration.

(5) Any arbitration under the UNCITRAL Arbitration Rules shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

(6) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting State shall carry out without delay the provisions of any such award and provide in its territory for the

enforcement of such an award.

## **2.**

(1) This Protocol shall enter into force upon signature.

(2) This Protocol shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose before its entry into force.

Done at Stockholm on 27 September, 2004, in two originals in the Swedish, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

Leif Pagrotsky

For the Government of the Peoples Republic of China

Zhang Zhigang