

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

The Government of the People's Republic of China and the Government of the Republic of Iceland (hereinafter referred to as the Contracting Parties),

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

Recognizing that the promotion and reciprocal protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States,

Desiring to intensify the economic 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 as well as other property rights such as mortgages, pledges and liens;
- (b) Shares, stock and any other kind of participation in companies;
- (c) Returns reinvested, claims to money or to any other performance having a financial value;
- (d) Intellectual property rights including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill.
- (e) Business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

2. The term "investor" means, with regard to either Contracting Party:

- (a) Any natural person who has nationality of that Contracting Party in accordance with its laws;
- (b) Any legal person, including companies, organizations and associations, incorporated or constituted in accordance with the laws and regulations of that Contracting Party.

3. The term "returns" means the amounts yielded by investments, such as profits, dividends, interest, capital gains, royalties or other income.

4. The term "territory" means the territory of each Contracting Party as defined in its laws and the adjacent areas over which each Contracting Party has sovereign rights or jurisdiction in accordance with international law.

## **Article 2. Promotion and Protection of Investment**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party for

investment in its territory and, subject to its right to exercise powers conferred by its laws, shall admit such investment.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party agrees that without prejudice to its laws and regulations it shall not take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

### **Article 3. Treatment of Investment**

1. Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of investors of any third State.

2. Neither Contracting Party shall in its territory subject 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 investors of any third State.

3. In addition to the provision of paragraphs 1 and 2 of this Article either Contracting Party shall, to the extent possible, accord treatment in accordance with the stipulations of its laws and regulations to the investments of investors of the other Contracting Party the same as that accorded to its own investors.

4. The provisions of paragraphs 1 to 3 this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from: paragraphs 1 to 3 this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, free trade to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

### **Article 4. Expropriation**

Investments of investors of either Contracting Party shall not be expropriated, nationalized or subjected to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against reasonable compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, shall include delay, be effectively realizable and be freely transferable. In such case the delay starts by the submission of a relevant application and must not exceed six months. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

### **Article 5. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Contracting Party accords to investors of any third State. Resulting payments shall be freely transferable.

### **Article 6. Repatriation**

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

(a) Capital gains, profits, dividends, Interest and other income;

(b) Proceeds from a total or partial liquidation of an investment;

(c) Payment made pursuant to a loan agreement in connection with an investment;

(d) Royalties and fees;

(e) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

2. The transfer mentioned above shall be made without undue delay in a convertible currency at the prevailing exchange rate of the Contracting Party accepting the investment on the date of transfer.

## **Article 7. Subrogation**

If a Contracting Party or its Agency makes payments to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

## **Article 8. Disputes between the Contracting Parties**

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

2. If a dispute between the Contracting Parties 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 for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, 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 if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its decision in accordance with the provision of this Agreement and the generally recognized principles of international law.

6. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal shall, upon the request of either Contracting Party, state the reasons upon which its decision is based.

7. Each Contracting Party shall bear the cost of its own member of the arbitral 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.

## **Article 9. Disputes between an Investor and a Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiation between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in paragraph 1 of this Article, it may be submitted at the request of either party to the International Centre for Settlement of Investment Disputes (ICSID) or to an ad hoc arbitral tribunal. Any dispute concerning other matters

between an investor of either Contracting Party and the other Contracting Party may be submitted by mutual agreement to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in paragraph 2 of this Article.

4. The decisions by the arbitral tribunal of the International Centre for Settlement of Investment Disputes shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

5. An ad hoc arbitral tribunal referred to in paragraph 3 of this Article shall be constituted for each individual case in the following way. Within two months the receipt of the request for arbitration, each party to the dispute shall appoint one member of the tribunal. Those two members shall then select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The Chairman shall be selected within two months from the date of appointment the other two members. If within the period specified above the tribunal has not been constituted, either party to the dispute may invite the Secretary-General of the International Centre for Settlement of Investment Disputes to make the necessary Appointments. If the Secretary-General is a national of either Contracting Party or otherwise prevented from discharging the said function, the next most senior member of the International Centre for Settlement of Investment Disputes who is not national of either Contracting Party shall be invited to make the necessary appointments.

6. The ad hoc arbitral tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take guidance the Arbitration Rules of the International Centre for Settlement of Investment Disputes.

7. The ad hoc arbitral 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 Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

8. The ad hoc arbitral tribunal shall reach its decision in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement and the generally recognized principles of international law.

9. Each party to the dispute shall bear the cost of its own member of the ad hoc arbitral 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 parties to the dispute.

## **Article 10. Other Obligations**

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement result in a position entitling investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its law additional to those specified in this Agreement entered into by the Contracting Party with investors of the other Contracting Party as regards their investments.

## **Article 11. Applicability of this Agreement**

This Agreement shall apply to investment which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

## **Article 12. Consultations**

1. The representatives of the two Contracting Parties shall hold meetings, from time to time for the purpose of:

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

2. Where either Contracting Party requests consultations on any matter concerning this Agreement, the other Contracting Party shall give prompt response. Consultations shall be held alternately in Beijing and Reykjavik.

## **Article 13. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.
2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.
3. After the expiration of the initial ten-year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.
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 ten years from such date of termination.

Done in duplicate at Beijing on March 31, 1994 in the Chinese, Icelandic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Republic of Iceland