

Agreement Between the Government of the People's Republic of China and the Government of Romania Concerning the Encouragement and Reciprocal Protection of Investments

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

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

Recognizing that the reciprocal encouragement, promotion and 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, immovable property and other rights such as mortgages and pledges;
- (b) Shares, stock and any other kind of participation in companies;
- (c) Claims to money or to any other performance having an economic value;
- (d) Intellectual property rights; such as copyrights, patents, industrial designs or models, trade or service marks, trade names as well as know-how and goodwill;
- (e) Concessions conferred by law, including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested should not affect their character as investment.

2. The term "investors" means:

in respect of the People's Republic of China:

- (a) natural persons who have nationality of the People's Republic of China in accordance with its laws;

(b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

In respect of Romania:

(a) natural Persons who, according to the law of Romania, are considered to be its citizens;

(b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of Romania and have their seat, together with real economic activities in the territory of Romania.

3. The term “returns” means the amounts yielded by investments, such as profits, dividends, interests, royalties or other legitimate income.

4. The term “territory” means:

in respect of the People's Republic of China:

The territory of the People's Republic of China as defined in its laws and the adjacent areas over which the People's Republic of China has sovereignty, sovereign rights or jurisdiction in accordance with international law,

In respect of Romania:

The territory of Romania, including the territorial sea, as well as the continental shelf and the economic exclusive zone, over which Romania exercises sovereign rights or jurisdiction in accordance with international law.

Article 2 Promotion, admission

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. When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment.

Article 3 Protection, treatment

1. Investments and activities associated with investments of investors of either Contracting party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.

3. The treatment and protection as mentioned in Paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to

investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4 Expropriation, compensation

1. Neither Contracting Party Shall expropriate nationalize or take similar measures (hereinafter referred to as “expropriation”) against investments of investors of the other Contracting Party in its territory, unless the following conditions are met;

- (a) for the Public interests;
- (b) under domestic legal procedure;
- (c) without discrimination;
- (d) against compensation.

2. The compensation mentioned in Paragraph 1, (d) of this Article shall be equivalent to the market value of the expropriated investments immediately before expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

3. The investor affected shall have the right, to prompt review, by a judicial or other competent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 5 Compensation for Losses

1. Investors of one Contracting Party who suffer loss in respect of their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, if it takes relevant measures, treatment no less favorable than that accorded to investors of a third State.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from

- (a) requisitioning of their property by its forces or authorities, or
- (b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or reasonable compensation. Resulting payments shall be freely transferable.

Article 6 Transfer

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

- (a) Profits, dividends, interests and other legitimate income;

- (b) amounts from total or partial liquidation of investments, ;
- (c) payment made pursuant to a loan agreement in connection with investment;
- (d) royalties in Paragraph 1, (d) of Article 1;
- (e) payments of technical assistance or technical service fee, management fee;
- (f) payments in connection with projects on contract associated with investment;
- (g) 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 transfers mentioned above shall be made 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 Payment 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 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 Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.
2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an hoc arbitral tribunal.
3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.
4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment (s).

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

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9 Disputes between a Contracting Party and an Investor of the Other 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 negotiations 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 either to the competent court of the Contracting Party accepting the investment, or to international arbitration (ICSID) for settlement if the parties to the dispute so agree.

3. Where an investor has decided to submit the dispute as agreed upon by the parties in paragraph 2 of this Article to the competent court of the Contracting Party where the investment has been made or to international arbitration, his decision shall be final.

Article 10 Other Obligations

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favorable than the treatment provided for in this Agreement, the more favorable treatment shall be applicable.

Article 11 Applicability

The Agreement shall also apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the Other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force, which are to be settled in accordance with the Agreement between the Government of the People's Republic of China and the Government of the Socialist Republic of Romania on the Mutual Promotion and Protection of Investments signed at Bucharest on February 10, 1983.

Article 12 Consultations

1. The representatives of the two Contracting Parties shall hold meeting from time to time for the purpose of;

- (a) reviewing the implementation of this Agreement;
- (b) exchanging legal information and investment opportunities;
- (c) resolving dispute arising out of investments;
- (d) forwarding proposals on promotion of investment;
- (e) studying other issues in connection with investment.

2. Where either Contracting Party requests consultation on any matters of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held alternately in Beijing and Bucharest.

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 five 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 five years period, either Contracting Party may at anytime 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 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.
5. The Agreement between the Government of People's Republic of China and the Government of the Socialist Republic of Romania on the Mutual Promotion and Protection of Investments signed at Bucharest on February 10, 1983 shall cease to be in force the day the present Agreement comes into force.

In Witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Bucharest on July 12, 1994 in the Chinese, Romanian 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 Romania.