

Agreement Between the Government of the People's Republic of China and the Government of the Sultanate of Oman for the Promotion and Protection of Investments

The Government of the people's Republic of China and the Government of the Sultanate of Oman (hereinafter collectively referred to as the Contracting Parties and each referred to as the Contracting Party),

Desiring to create favourable conditions for greater economic cooperation between them and in particular for investments by investors of one Contracting Party in the territory of other Contracting Party,

Recognizing that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting Parties,

Have agreed as follows:

Article 1 Definitions

For the purposes 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 any other property rights in rem including, such as mortgages, liens, pledges, usufruct and similar rights;

(b) shares, stocks and debentures of companies or other rights or interests in such companies and government-issued securities;

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

(d) copyrights, trademarks, patents, industrial designs and other industrial designs and other industrial property rights, know-how, trade secrets, trade names and goodwill;

(e) any right conferred by law or contract and any licences and permits pursuant to law, including the right to search for, extract and exploit natural resources.

(2) The term "investor" shall mean any natural or legal person of one Contracting party who invests in the territory of the other Contracting Party.

(3) The term "natural person" shall mean with respect to either Contracting party a natural person holding the nationality of that State in accordance with its laws.

(4) The term “legal person” shall mean with respect to either Contracting Party any entity established in accordance with, and recognized as a legal person by the laws of either Contracting Party, such as public institutions, corporations, authorities, foundations, private companies, firms, establishments and organizations, irrespective of whether their liabilities are limited or otherwise, and any entity established outside the jurisdiction of a Contracting Party as a legal Person and in which such Contracting Party or any of its nationals or any legal person established within its jurisdictions has predominant interest.

(5) The term “returns” shall mean amounts yielded or still to be yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, share dividends, royalties of fees, payments of technical assistance and technical services and other miscellaneous considerations, including reinvested returns and capital gain.

(6) The term “territory” shall mean the territory of each Contracting Party as defined in its laws and the adjacent areas over which each Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

Article 2 Promotion and Protection of Investments

(1) Each Contracting Party shall promote and 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) Each Contracting party shall at all times ensure fair and equitable treatment to the investments and returns of investors of the other Contracting Party. Each Contracting Party shall ensure, subject to its laws and regulations, that the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party shall not in any way be subjected to or impaired by any unreasonable or discriminatory measures.

Article 3 Most-Favoured-Nation Provisions

(1) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of investors of any third State.

(2) Each Contracting party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment as well as other activities connected with investments, treatment not less favourable than that which it accords to investors of any third State.

(3) The treatment mentioned above shall not apply to any advantage accorded to investors of a third State by either Contracting Party based on the membership of that Contracting Party in a Customs Union, common Market, Free Trade Zone, Regional or subregional arrangement, Multilateral international economic agreement or an agreement on avoidance of double taxation, or for facilitation frontier trade.

Article 4 Nationalization or Expropriation

(1) 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.

(2) Such compensation shall be computed on the basis of the marked value of the investment immediately prior to the point of time when the decision for expropriation was announced or became publicly known. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation and on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. The compensation shall include interest at the current LIBOR rate of interest applicable to the currency in which the investment was originally undertaken from the date of expropriation until the date of payment.

(3) Where a Contracting party nationalizes or expropriates the assets of a legal person which is established or licensed under the law in force, in its territory and in which any natural or legal person of the other Contracting Party owns shares, stocks, debentures or other rights or interest, it shall ensure that fair and reasonable compensation is received in freely convertible currencies and allowed to be repatriated. Such compensation shall be determined on the basis of the recognized principles of valuation such as the market value of the assets immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known. The compensation shall include interest at the current LIBOR rate of interest applicable to the currency in which the investment was originally undertaken from the date of nationalization or expropriation until the date of payment.

(4) The determination of the amount of compensation, in the absence of agreement being reached between the investor and the Contracting party taking expropriation, shall be referred to the arbitration. The amount of compensation finally determined shall be paid to the investor in freely convertible currencies and allowed to be repatriated without undue delay.

(5) The provisions of Paragraphs 1, 2, 3 of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 5 Compensation for Damage or Loss

(1) Investors of the 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, or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to investors of any 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 appropriate, fair and non discriminatory compensation.

(3) Payments resulting under this Article shall be made in a convertible currency, freely transferable and without undue delay. The compensated investor shall have the right to request conversion from local currency at an exchange rate ruling on the last business day prior to the events leading to his loss.

Article 6 Repatriation of Capital and Returns

(1) Investors of either Contracting Party shall, after performing their fiscal obligations, be able to transfer their capital and returns without undue delay, including:

(a) capital and additional capital amount used to maintain and increase and expand existing investments;

(b) net returns, dividends, service fees accruing from technical assistance, interest and other current profits accruing from any investment by an investor of either Contracting Party;

(c) the proceeds accruing from the total or partial sale or total or partial liquidation of any investment made by an investor of either Contracting Party;

(d) repayment of loans made by investors of either Contracting party as well as accrued interests;

(e) the earnings of nationals of either Contracting party deriving from their work and services in connection with an investment its territory in accordance with its national laws and regulations.

(2) Without restricting the generality of Article 3 of this Agreement, the Contracting parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State. Such transfers shall be in convertible currencies at the exchange rate on the transfer date.

Article 7 Subrogation

In case one Contracting Party or any of its institutions has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under that guarantee, the other Contracting Party shall recognize the transfer of the rights of the insured investor to the Contracting Party guarantor and the subrogation of the one Contracting party shall not

exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation Article 4, 5 and 6 shall apply respectively.

Article 8 Settlement of Disputes between Contracting Parties

(1) Any disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by 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 an ad 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 happens to be 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 procedures. The tribunal shall reach its decision 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 decision 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 decision.

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

Article 9 Settlement of Investment Disputes

(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 a 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 an ad hoc arbitral tribunal. The Provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedures specified in the Paragraph 2 of this Article.

(4) Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. 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 Center for Settlement of Investment Disputes to make necessary appointments.

(5) The tribunal shall determine its own procedures. However, the tribunal may, in the course of determination of procedures, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

(6) The 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.

(7) The tribunal shall adjudicate 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 the Agreements as well as the generally recognized principles of international law accepted by both Contracting Parties.

(8) Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 10 Relations between Contracting Parties

The provisions of this Agreement shall irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11 Application of Other Rules

If the treatment to be accorded by one Contracting party to investors of the other Contracting party in accordance with its laws and regulations or other specific provisions is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 12 Applicability

This Agreement shall apply to investments 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 other Contracting party in the territory of the Latter.

Article 13 Entry Into Force

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other through diplomatic channels that its legal requirements for the entry into force of this Agreement have been fulfilled.

Article 14 Duration and Termination

(1) This Agreement shall remain in force a period of ten years and shall continue in force thereafter for another similar periods or unless terminated in writing by either Contracting party one years at least before its expiration.

(2) In respect of investment made prior to the date of termination of the Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from the date of termination of the Agreement.

In witness whereof, the undersigned duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Muscat on this 18thday of March 1995, corresponding to 16thday of shawwal 1415 H, in the China, Chinese and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Sultanate of Oman