

**AGREEMENT**  
**BETWEEN**  
**THE PEOPLE'S REPUBLIC OF CHINA**  
**AND THE STATE OF KUWAIT ON JUDICIAL ASSISTANCE**  
**IN CIVIL AND COMMERCIAL MATTERS**

**( Draft )**

The People's Republic of China and the State of Kuwait (hereinafter referred to as "the Parties"),

Being desirous of strengthening the bonds of friendship between the two countries on the basis of mutual respect for sovereignty, equality and mutual interest and promoting fruitful assistance in the judicial and legal spheres,

Recognizing the need to facilitate the widest measure of judicial assistance in civil and commercial matters,

HAVE AGREED as follows:

Article 1

1. Nationals of one Party shall, in the territory of the other Party, enjoy the same judicial protection as nationals of the other Party and shall have the right to access to courts of the other Party under the same conditions as those for the nationals of the other Party.

2. Provisions of previous paragraph of this Article shall also apply to legal persons located and incorporated in the territory of either Party in accordance with its national law.

## Article 2

Nationals of one Party shall, in the territory of the other Party, be entitled in accordance with the laws and procedures of the latter to reduction or exemption from payment of costs of proceedings under the same conditions and to the same extent provided for its nationals.

## Article 3

The Parties may exchange information concerning the laws in force and the judicial practice in their respective countries related to the implementation of this Agreement.

## Article 4

1. The Parties shall grant each other under this Agreement the widest measure of mutual judicial assistance in civil and commercial matters in accordance with their national laws.

2. Judicial assistance under this Agreement shall apply in:

- a. service of summons and other judicial documents;
- b. the taking of evidence;
- c. recognition and execution of decrees and settlements;
- d. recognition and enforcement of arbitral awards.

3. This Agreement shall be without prejudice to any rights and obligations of the Parties pursuant to other treaties or arrangements.

## Article 5

1. Requests for judicial assistance shall be made through the Central Authorities of the Parties.

2. In the People's Republic of China the Central Authority is the Ministry of Justice. In the State of Kuwait the Central Authority is the Ministry of Justice.

## Article 6

1. Unless otherwise stated, all official documents in connection with the judicial assistance shall be sealed by the court or the other competent authorities, and the request of judicial assistance shall be approved by the Central Authority of the Requesting Party.

2. All requests and supporting documents shall be accompanied by a translation into the official language of the Requested Party or in English language.

3. If the Requested Party considers that the information provided by the Requesting Party is not sufficient to enable the request to be dealt with in accordance with this Agreement, it may require additional information from the Requesting Party.

## Article 7

1. The service of summons and other judicial documents shall be effected in accordance with the procedure provided for in the Laws of the Requested Party, or by a particular method desired by the Requesting Party, unless such a method is incompatible with the Law of the Requested Party.

2. The Summons and other judicial documents served in pursuance of this Agreement shall be deemed to have been served in the territory of the Requesting Party.

3. The Provisions of Article (5) of this Agreement shall not preclude the right of the Contracting Parties to effect such service, through its diplomatic or consular representatives, of summons and other judicial documents on its nationals residing in the territory of the other Contracting Party without application of any compulsion. Service in such cases shall entail no responsibility for the Contracting Party where the service is executed.

## Article 8

The request for the service of summons and other judicial documents shall furnish all particulars concerning the name (full name), place of residence or business of the addressee, nature of the proceedings, and a list of documents and papers to be served on that person. Where any special mode of service is desired, this should also be indicated in the request.

## Article 9

1. A request for service of summons and other judicial documents, which is in conformity with the provisions of this Agreement, may not be refused, unless the Requested Party considers that compliance with the request would infringe its sovereignty, security or public order.

2. Service may not be refused on the ground that the request does not show sufficient legal grounds supporting the merits of the case.

3. Whenever the service is not effected, the Requested Party shall forthwith notify the Requesting Party of the reasons therefore.

## Article 10

1. The competent authority in the Requested Party shall serve the said documents and papers in accordance with its laws and rules applicable in this regard. No fees and costs may be levied for effecting such service.

2. Service may be effected in a special mode or manner specified by the Requesting Party, provided that it does not contravene the laws of the Requested Party and further subject to the payment by the Requesting Party of costs of such special mode of service.

## Article 11

1. The responsibility of the competent authority in the Requested Party shall be limited to the delivery of the judicial documents and papers to the addressee.

2. Delivery shall be proved by the signature of the addressee and a certificate issued by the competent authority stating the name of the addressee, the date and mode of delivery, and where such delivery could not be effected, the reasons for such non-delivery.

3. The certificate proving delivery shall be sent to the Requesting Party through the Central Authority.

## Article 12

1. The judicial authorities of a Party may in accordance with the provisions of the Law of that Party, request for the taking of evidence in civil and commercial matters by means of Letter of Request addressed to the competent judicial authorities of the other Party.

2. For the purpose of this Agreement, taking of evidence shall be deemed to cover:

- a. the taking of the statements;
- b. the production, identification or examination of documents, records or materials requested.

3. A letter of Request shall specify:

- a. the judicial or other competent authority requesting the evidence;
- b. the nature of the proceedings for which the evidence is required and all necessary information related thereto;
- c. the names and addresses of the parties to the proceedings;
- d. the evidence to be obtained; and
- e. the names and addresses of the persons to be examined.

4. Where deemed necessary, the Letters of Request shall be accompanied by a list of interrogatories to be put to the witnesses or other persons involved or a statement of the subject about which they are to be examined and the documents relevant to such evidence or statement.

## Article 13

The judicial proceedings performed for the purpose of taking evidence in pursuance of the provisions of this Agreement shall have the same legal effect as if it is performed by the competent authority in the Requesting Party.

## Article 14

1. The competent authorities of the Requested Party shall execute the Letters of Request in accordance with the provisions of its own laws and obtain the evidence required by applying the same methods and proceedings as are permissible under its

laws, including the same appropriate methods of compulsion.

2. The Requested Party shall follow any special method or procedure, which has been expressly specified by the Letter of Request insofar as it is not incompatible with its laws and practices.

3. The Letters of Request shall be executed as expeditiously as possible.

4. The Requesting Party shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives if any, may be present. This information shall be sent directly to the parties or their representatives that are known in the territory of the Requested Party, when the Requesting Party so requests.

5. If the letter of Request has been executed, the necessary documents establishing its execution and any relevant evidence shall be sent to the Requesting Party.

6. In every instance where the Letter of Request is not executed in whole or in part, the Requesting Party shall be informed immediately and advised of the reasons.

## Article 15

1. The execution of a Letter of Request may be refused by the Requested Party only to the extent that:

- a. the execution of the letter does not fall within the functions of the judiciary;
- b. the execution of the letter would prejudice its sovereignty, security or public order.

2. Execution may not be refused solely on the ground that under its internal laws the Requested Party claims exclusive jurisdiction over the subject matters of the action or that its internal laws would not admit a right of action on it.

## Article 16

1. The execution of Letters of Request and the taking of evidence by the Requested Party shall not give rise to any reimbursement of charges, expenses or costs, under whatever description by the Requesting Party. However, the Requested Party shall have the right to seek reimbursement of:

- a. any expenses and charges paid to the witnesses, experts or interpreters;

b. any costs and expenses occasioned by the use of a special procedure on request.

2. If it becomes apparent that execution of a request requires expenses of an extraordinary nature, the Parties shall consult to determine the conditions under which the request can be executed.

#### Article 17

1. Each of the Parties shall, in accordance with its laws, recognize and/or execute decrees in civil, commercial and personal matters and decrees concerning damages in criminal matters given by courts of the other Party after the entry into force of this *Agreement*.

2. The term “Decree” as used in this Agreement, whatever its designation, means any decision rendered in judicial proceedings by a competent Court of the Parties.

3. This Agreement shall not apply to interim or provisional measures, except matters relating to allowances.

#### Article 18

The Courts of the Contracting Party where immovable property is situated shall be competent to determine the rights connected with such property.

#### Article 19

1. In matters other than immovable property, the Courts of a Party shall have jurisdiction in the following cases:

- a. the defendant has his domicile or residence in the territory of that Party at the time of institution of the suit; or
- b. the defendant has at the time of institution of the suit, a place or a branch of commercial or industrial nature or works for gain in the territory of that Party, and the suit relates to such activity; or
- c. by an express or implied agreement between the plaintiff and the defendant, the contractual obligations giving rise to the litigation are or have to be performed in the territory of that Party; or

- d. in case of non-contractual liability the infringing act is committed in the territory of that Party; or
- e. the defendant has accepted explicitly or implicitly the jurisdiction of the Court; or
- f. any application for provisional measures, if the Courts of such Party are deemed competent to hear the principal dispute, by virtue of the provisions of this Agreement.

2. The previous paragraph shall not prejudice the exclusive jurisdictions provided for by the laws of each Party.

## Article 20

Subject to the provisions of this Agreement, the Court of the Contracting Party requested to recognize or execute a decree shall, when examining the grounds of jurisdiction exercised by the Courts of the other Contracting Party, be bound by the facts stated in that decree and on which jurisdiction is based, unless the said decree had been passed in absentia.

## Article 21

A decree shall not be recognized or executed in the following cases:

- a. it is not conclusive and executable in accordance with the laws of the Party rendered the decree; or
- b. it has not been pronounced by a Court of competent jurisdiction in accordance with the Articles 18 and 19 of this Agreement; or
- c. it sustains a claim founded on a breach of any law in force, or is contrary to the constitutional rules, sovereignty, security or the principles of public order in the Requested Party; or
- d. it contravenes the rules concerning the legal representation of persons suffering from lack of capacity in the Requested Party; or
- e. it is passed in absentia and the defaulting party was not duly summoned in accordance with the rules applicable in his country; or
- f. the dispute in which the decree was passed is pending in a suit before one of the courts in the Party, between the same parties and involving the same cause



of action, and that suit was raised before one of the courts of the latter Party, at a date prior to the raising of that dispute in the Court of the Party which passed the decree, and provided that the court before which the suit was raised, is competent to hear and decide upon it; or if the decree was rendered by a court of third State, between the same parties and on the same subject matter, and has been recognized by the Requested Party.

## Article 22

Procedures relating to recognition or execution of a decree shall be subject to the laws of the Requested Party.

## Article 23

1. The competent judicial authority in the Requested Party to recognize or execute a decree shall, without reviewing the merits of the case, confine itself to ascertaining the compliance of the decree with the conditions provided for in this Agreement.

2. The competent judicial authority in the Requested Party shall, if so required by its laws, in executing the decree, take the necessary action to notify the person concerned, in the same manner as it would have done had it been passed in its own territory.

3. The decision for execution may be made for the whole or part of the decree, if the execution of such part of the decree is severable.

## Article 24

The request of recognition or execution of a decree shall be accompanied by the following:

- a. an official copy of the decree;
- b. a certificate showing that the decree is conclusive and executable, unless that is provided for in the decree itself;
- c. in case of a decree in absentia, an authenticated copy of the summons or any other document showing that the defendant was duly summoned;

- d. a document to establish that the party who lacks legal capacity in litigation has been duly represented.

#### Article 25

1. The settlement of a claim which is rendered or approved by a competent court of either Party according to its national law shall be recognized and enforced in the territory of the other Party, after ascertaining that it does not contain any provisions contravening any law in force, or the constitutional rules, sovereignty, security or the public order in the Requested Party.

2. The party requesting recognition or execution of a settlement must submit an official copy and a certificate from the court stating the extent, to which the settlement has been satisfied.

#### Article 26

1. Application for recognition and enforcement of court decrees and settlements may be submitted directly by the party to the case to the competent court of the Requested Party.

2. The application and other documents shall be accompanied by certified translation of the language of the Requested Party.

#### Article 27

The court decrees which have been granted recognition or enforcement shall have the same effect as those rendered by the courts of the Requested Party in the territory of that Party.

#### Article 28

The two Parties shall recognize and enforce for each other the arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded in New York on June 10, 1958.

## Article 29

Any dispute arising from the interpretation and implementation of this Agreement shall be resolved by consultation through diplomatic channels if the Central Authorities of the Parties are themselves unable to reach agreement.

## Article 30

1. Both Parties undertake to take all appropriate, including legislative, measures to put this Agreement into force.

2. This Agreement shall be subject to ratification in accordance with the constitutional procedures in force in both Parties. It shall become effective from the thirtieth day after the date of the last intimation, by which either Party shall inform the other through diplomatic channels that all the necessary legal procedures for the enforcement of the Agreement have been fulfilled.

3. This Agreement shall remain effective after coming into force in accordance with the Paragraph 2 of this Article unless either party notifies the other in writing through the ordinary diplomatic channels of his intention to terminate it and termination shall take effect after one year from the date of notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate, in Beijing on this 18th day of June, 2007, in the Chinese, Arabic and English languages, all three texts being equally authentic. In case of divergence, the English text shall prevail.

**For the People's Republic of China**

**For the State of Kuwait**

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