

# **Agreement Between the Government of the People's Republic of China and the Government of the Argentine Republic on the Promotion and Reciprocal Protection of Investments**

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

Desiring to intensify economic cooperation between both countries;

Aiming at creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, based on the principles of mutual respect for sovereignty, equality, and mutual benefit;

Recognizing that the promotion and protection of such investments through an agreement stimulates business initiatives in this field;

Have agreed as follows:

## Article 1

For the purposes of this Agreement:

(1) The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws. It includes in particular, not exclusively:

(a) movable and immovable property as well as any other property rights such as mortgages and pledges;

(b) shares, stocks and any other kind of participation in companies;

(c) title to money and claims to performance having an economic value; loans only being included when they are directly related to a specific investment;

(d) intellectual property rights including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;

(e) concessions conferred by law, including concessions to search for or exploit natural resources.

(2) The term "investor" shall mean:

In respect of the People's Republic of China:

(a) natural persons who have the nationality of the People's Republic of China.

(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 the Argentine Republic:

(a) any natural person who is a national of the Argentine Republic in accordance with its laws.

(b) any legal person constituted in accordance with the laws and regulations of the Argentine Republic and having its seat in the territory of the Argentine Republic:

If natural or juridical persons of a Contracting Party have an interest in a juridical person which was established within the territory of a third State, and this juridical person invests in the other Contracting Party it shall be recognized as a juridical person of the former Contracting Party. This paragraph of this Article can be applied only when the said third State has no right or abandons its right to protect the said juridical person.

(3) The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons have, at the time of the investment, been domiciled in the latter Contracting Party for more than 2 years, unless it is proved that the original investment was admitted into its territory from abroad.

(4) The term "returns" means all amounts yielded by an investment such as profits, dividends, interests, royalties and other income.

(5) The term "territory" shall mean the national territory of either Contracting Party including those maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

## Article 2

(1) Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to investors of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments, according to the laws and regulations of each Contracting Party.

## Article 3

(1) Investments and activities associated with investments by investors of the other Contracting Party shall be accorded in all times fair and equitable treatment and shall enjoy constant 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.

(2) The treatment and protection accorded by this Agreement shall not be less favourable than that accorded to investments and activities associated with such investments of investors of a third State.

(3) The treatment and protection of the most favoured nation mentioned in paragraph (2) of this article, shall not include the privileges which either Contracting Party accords to investors of a third State resulting from a free trade area, a customs union, an economic union, a common market or any other regional agreement, or by virtue of an agreement relating to avoidance of double taxation or for facilitating frontier trade.

(4) The provisions of Paragraph (2) of this Article shall neither be construed so as to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Argentine Republic with Italy on 10 December 1987 and with Spain on 3rd. June 1988.

#### Article 4

(1) Neither of the Contracting Parties shall take any measure of nationalization or expropriation (hereinafter referred to as "expropriation") or any other measure having similar effect against investments in its territory of investments of the other Contracting Party. unless the following conditions are met:

(a) the measures are taken for the requirement of public and social interest;

(b) under due domestic legal procedure;

(c) without discrimination;

(d) against compensation.

(2) The compensation referred to in paragraph 1 (d) of this Article shall be such as to place the investors in the same financial position as that in which they would have been if the measures referred to in paragraph 1 of this Article had not been taken. Such compensation shall be paid without delay. It shall be effectively realizable and freely transferable at the exchange rate in effect on the date used for the determination of the amount of compensation.

(3) Investors of either Contracting Party who suffers losses of their investments in the territory of the other Contracting Party due 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, a treatment which is no less favourable than that accorded to investors of any third State.

#### Article 5

(1) Each Contracting Party shall subject to its laws and regulations guarantee investors of the other Contracting Party the free transfer of their investments and returns, including:

- (a) profits, dividends, interests and other income;
  - (b) the proceeds from a total or partial liquidation of an investment;
  - (c) funds in repayment of loans as defined in Article 1 paragraph (1) c) of this Agreement;
  - (d) royalties referred to in Article 1, paragraph (1) d) of this Agreement.
  - (e) payment of technical assistance or technical service fee, management fee;
  - (f) payments in connection with projects on contract;
  - (g) earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other;
  - (h) compensations provided for in Article 4;
- (2) Transfers shall be effected without delay in freely convertible currency at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting party in whose territory the investment was made.

#### Article 6

If a Contracting Party or an Agency thereof makes a 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 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 7

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the 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 ad hoc arbitral tribunal.
- (3) Such tribunal shall comprise three arbitrators. Within two months from the date of the receipt of the written notice for arbitration, 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 make the necessary appointments. 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 appointments.

(5) The arbitral tribunal shall determine its own procedure.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. The ad hoc arbitral tribunal shall interpret the decision, upon the request of either Contracting Party.

(7) Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The cost of the chairman as well as any other costs of the tribunal shall be borne in equal parts by the two Contracting Parties.

#### Article 8

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot be settled through negotiations within six months following the date on which the dispute has been raised, 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 according to the following conditions:

In respect of the People's Republic of China:

If a dispute involving the amount of compensation for expropriation can not be settled within six months after resort to negotiation as specified in paragraph (1) of this Article it may be submitted at the request of either party, to an arbitral tribunal constituted in accordance with the procedure established in paragraph 4. Any dispute concerning other matters between an investor of either Contracting Party and the other Contracting Party may be submitted by mutual agreement of the parties to the dispute.

In respect of the Argentine Republic:

Any dispute as specified in paragraph 1 of this Article which can not be settled within six months following the date on which the dispute has been raised by either party may be submitted to an arbitral tribunal constituted in accordance with the procedure established in paragraph 4.

(3) Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment had been made or to international arbitration, this choice shall be final.

(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 the necessary appointments.

(5) The Tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as a guidance either the arbitration rules of the International Center for settlement of Investments Disputes (ICSID) created by the Convention on The Settlement of Investments Disputes between States and Nationals of other State opened for signature in Washington on 18 march 1965 or the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The tribunal shall reach its decision by a majority of votes.

(6) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law. The terms of any specific agreement concluded in relation to such an investment and the general rules of relevant international law.

(7) The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.

#### Article 9

If the provision of the laws and regulations of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement or if any particular agreement concluded in relation to the investment contain rules; whether general or specific entitling investments by investors of other Contracting Party to a treatment more favourable than is provided for in the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

#### Article 10

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

(2) This Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

#### Article 11

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

- (a) reviewing the implementation of this Agreement;
- (b) exchanging legal information and investments opportunities;
- (c) resolving dispute arising out of investments;
- (d) forwarding proposal on promotion of investments;

(e) studying other issues in connection with investments.

(2) Where either Contracting Party requests consultations on any of the matters mentioned in paragraph (1) of this Article, the other Contracting Party shall accord sympathetic in Beijing and Buenos Aires.

#### Article 12

(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 procedures have been fulfilled and shall remain in force for a period of ten years

(2) This Agreement shall remain 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) In respect of investment made prior to the date of terminate of this Agreement, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Beijing on 5/11/92 in duplicate, in the Chinese, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall, however, prevail.

For the Government of the People's Republic of China

For the Government of the Argentine Republic

#### Protocol

On the signing of the Agreement between the Government of the People's Republic of China and the Government of the Argentine Republic on the promotion and reciprocal protection of investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement.

With regard to Article 5 of the Agreement:

The transfer referred to in Article 5 of this Agreement shall in respect of the People's Republic of China, be permitted the free transfers which shall be made from the foreign exchange deposit account in the People's Republic of China of investors of the Argentine

Republic, in accordance with the foreign exchange control regulations of the People's Republic of China.

In respect of the Argentine Republic, the investor of the other Contracting Party shall in any event be granted the right to use their export earnings in order to transfer the payments related to their investments.

Done in duplicate on 5/11/92 at Beijing in the Chinese, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Argentine Republic