

No. 24573

**CHINA
and
DENMARK**

Agreement concerning the encouragement and reciprocal protection of investments. Signed at Beijing on 29 April 1985

Authentic texts: Chinese, Danish and English.

Registered by China on 4 December 1986.

**CHINE
et
DANEMARK**

Accord relatif à l'encouragement et à la protection réciproque des investissements. Signé à Beijing le 29 avril 1985

Textes authentiques : chinois, danois et anglais.

Enregistré par la Chine le 4 décembre 1986.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE GOVERNMENT OF THE
KINGDOM OF DENMARK CONCERNING THE ENCOUR-
AGEMENT AND THE RECIPROCAL PROTECTION OF IN-
VESTMENTS

Preamble

The Government of the People's Republic of China and the Government of the Kingdom of Denmark,

Desiring to create favourable conditions for investments in both states and to intensify the co-operation between nationals and companies in both states with a view to stimulating the productive use of resources,

Recognizing that an equitable and reasonable treatment of investments on the basis of equality and mutual benefit will serve this aim,

Have agreed as follows:

Article 1. DEFINITIONS

For the purpose of this Agreement,

(1) (a) "Investment" means any kind of assets as permitted by each Contracting Party in accordance with its laws and regulations and in particular, but not exclusively:

- (i) Shares, parts or any other form of participation in companies incorporated in the territory of one Contracting Party,
- (ii) Returns reinvested, claims to money or other rights relating to services having a financial value,
- (iii) Goods movable and immovable, as well as any other real rights as mortgages, guarantees and any other similar rights as defined in conformity with the law of the Contracting Party in the territory of which the goods in question is situated,
- (iv) Industrial and intellectual property rights, technology, trademarks, goodwill, know-how and any other similar rights,
- (v) Business concessions conferred by law or by contract, if permitted by law, including the concessions related to natural resources.

(b) The said term shall refer to all direct investments in companies made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

The term "investments" covers all investments made in the territory of a Contracting Party under its laws in force by nationals or companies of the other Contracting Party before or after the entry into force of this Agreement.

¹ Came into force on 29 April 1985 by signature, in accordance with article 11 (1).

(2) “Returns” means the amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(3) “Nationals” means:

(a) In respect of the People’s Republic of China:

Physical persons deriving their status as nationals of the People’s Republic of China from the law of the People’s Republic of China.

(b) In respect of the Kingdom of Denmark:

Physical persons deriving their status as Danish nationals from Danish law.

(4) “Companies” means:

(a) In respect of the People’s Republic of China:

Corporations, firms or associations incorporated or constituted under the law in force in any part of the People’s Republic of China.

(b) In respect of the Kingdom of Denmark:

Corporations, firms or associations incorporated or constituted under the law in force in any part of the Kingdom of Denmark.

(5) This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in the sea and submarine areas over which the other Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

The present Agreement shall not apply to the Faroe Islands and Greenland.

Article 2. PROMOTION OF INVESTMENTS

Each Contracting Party shall admit the investment by nationals and companies of the other Contracting Party in accordance with its legislation and administrative practice, and promote such investments as far as possible.

Article 3. PROTECTION OF INVESTMENT

(1) Investments of nationals or companies of either Contracting Party shall at all times be accorded equitable and reasonable treatment and shall enjoy protection and security in the territory of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to approved investment contracts of nationals or companies of the other Contracting Party.

(2) Neither Contracting Party shall in its territory subject investments made by nationals or companies of the other Contracting Party or returns of such investments to treatment less favourable than that which it accords to investments or returns of nationals or companies of any third State.

(3) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments or returns, to treatment less favourable than that which it accords to nationals or companies of any third State.

(4) Each Contracting Party guarantees that without prejudice to its laws and regulations it shall not adopt any discriminatory measures against any joint

venture with participation by share-holding nationals or companies of the other Contracting Party, or against investments made by nationals or companies of the other Contracting Party, including the management, maintenance, use, enjoyment or disposal of such investments.

(5) The provisions of this Article shall have no effect in relation to international agreements entered into by either of the Contracting Parties relating wholly or mainly to taxation.

Article 4. EXPROPRIATION AND COMPENSATION

(1) Investments or returns of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of the expropriating Party, on a basis of non-discrimination and against compensation. Such compensation shall amount to the value of the investment or returns expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without undue delay and shall include interest at an appropriate rate until the date of payment, be effectively realisable and be freely transferable. The national or company concerned has a right to prompt review of the legality of the expropriatory measures taken against the investment or return and the valuation of compensation resulting from expropriation by the competent courts of the Contracting Party making the expropriation in accordance with its legal procedures.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares or debentures, it shall ensure that the provisions of Paragraph (1) of this Article are applied to the extent necessary to guarantee compensation in respect of their investment to the owners of these shares or debentures.

Article 5. COMPENSATION FOR LOSSES

Nationals or companies 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, or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards any relevant measure taken by the latter Contracting Party, which is non-discriminatory compared with treatment accorded to nationals or companies of any third State, and no less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 6. REPATRIATION AND TRANSFER OF CAPITAL AND RETURNS

(1) Each Contracting Party shall, subject to the right of each Contracting Party to exercise on a non-discriminatory basis the powers conferred by its laws, allow without delay the transfer of:

- (a) The invested capital or the proceeds of total or partial liquidation or alienation of the investment;
- (b) The returns realized;

- (c) The payments made for the reimbursement of the credits for investments and interests due;
- (d) An adequate portion of the earnings of the citizens who are allowed to work in an investment made in its territory;
- (e) Payments of compensation amounts resulting from the provisions of Article 4. In such case the delay starts by the submission of a relevant application and must not exceed six months.

(2) Transfers of currency pursuant to Articles 4, 5 and Section (1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency at the official rate of exchange in force at the date of transfer.

Article 7. SUBROGATION

If a Contracting Party makes payment to its own nationals or companies under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the national or company to the former Contracting Party, as well as
- (b) That the former Contracting Party is entitled by virtue of subrogation to exercise the rights and enforce the claims of that national or company and shall assume the obligations related to the investment.

Article 8. ARBITRATION AND CONCILIATION

(1) In the event of a dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party, the national or company concerned may file complaint with the competent authority of the other Contracting Party. Negotiations for settlement will then take place between the parties in dispute.

(2) If such dispute cannot be thus settled 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 resulting from expropriation mentioned in Article 4 cannot be settled within six months after resorting to the procedure specified in Paragraph 1 of this Article by the national or company concerned it may be submitted to an international arbitral tribunal established by both parties.

If the national or company concerned has resorted to the procedure specified in the above Paragraph 2 of this Article, the provisions of this Paragraph shall not apply.

(4) The international arbitral tribunal mentioned above shall be especially constituted in the following way: each Party concerned shall appoint an arbitrator. The two arbitrators shall appoint an arbitrator as Chairman, who is a national of a third State which shall have diplomatic relations with both Contracting Parties. The arbitrators shall be appointed within two months and the Chairman within

four months from the date when one Party concerned notifies the other Party of its submission of the dispute to arbitration.

If the necessary appointments are not made within the period specified in the previous Paragraph, either Party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

The arbitral tribunal shall determine its own arbitral procedures with reference to the "Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", done at Washington on March 18, 1965.¹ The decision of the arbitral tribunal shall be final and binding, and shall be enforceable in accordance with domestic laws. The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either Party concerned.

Each Party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the Parties concerned.

(5) The provisions of this Article shall not exclude both Contracting Parties from using the procedures specified in Article 9 where a dispute concerns the interpretation or application of this Agreement.

Article 9. DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties. If such a dispute cannot be settled within five months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(2) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

If within any of the periods specified 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.

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

(3) The arbitral tribunal shall apply the provisions of this Agreement, other agreements concluded between the Contracting Parties, and the general principles of international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

(4) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the Contracting Parties.

(5) The arbitral tribunal determines its own procedure.

Article 10. OTHER RIGHTS OR BENEFITS

Nothing in this Agreement shall prejudice any rights or benefits for a national or company of each Contracting Party accruing under the laws and regulations of the Contracting Party in whose territory the investment is situated or under international agreements entered into by the Contracting Parties.

Article 11. ENTRY INTO FORCE, DURATION AND TERMINATION

(1) This Agreement shall enter into force upon signature.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of ten years from that date.

DONE in duplicate at Beijing on April 29, 1985 in the Chinese, Danish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

[Signed — Signé]¹

For the Government
of the People's Republic of China

[Signed — Signé]²

For the Government
of the Kingdom of Denmark

¹ Signed by Zheng Tuobin — Signé par Zheng Tuobin.

² Signed by Uffe Ewleemann-Jensen — Signé par Uffe Ewleemann-Jensen.