

No. 25119

**FEDERAL REPUBLIC OF GERMANY
and
CHINA**

**Agreement concerning the encouragement and reciprocal
protection of investments (with protocol). Signed at
Beijing on 7 October 1983**

Authentic texts: German and Chinese.

Registered by the Federal Republic of Germany on 24 July 1987.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
CHINE**

**Accord relatif à la promotion et à la protection réciproque
des investissements (avec protocole). Signé à Beijing le
7 octobre 1983**

Textes authentiques : allemand et chinois.

Enregistré par la République fédérale d'Allemagne le 24 juillet 1987.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Germany and the People's Republic of China,
Desiring to intensify economic co-operation between the two States,
Intending to create favourable conditions for investments by investors of each Contracting Party in the territory of the other Contracting Party,
Have, following negotiations between representatives of the Governments of the two States,

Agreed as follows:

Article 1. For the purpose of this Agreement:

1. The term "investments" shall comprise all assets permitted under such legislation of a Contracting Party as may be in force, and in particular, but not exclusively:

- (a) Ownership of movable and immovable property as well as any other rights *in rem*, such as mortgages, liens, pledges or the like;
- (b) Shares of companies and other kinds of interest;
- (c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;
- (d) Copyrights, industrial property rights, technical processes, know-how, trade marks and trade names;
- (e) Business concessions, including concessions to search for, extract or exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their classification as investment;

2. The term "returns" shall mean the amounts yielded by an investment for a definite period as profit, dividends, interest and other lawful income;

3. The term "investor" shall mean:

In respect of the Federal Republic of Germany:

- (a) Germans residing in the area of application of this Agreement;
- (b) Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the area of application of this Agreement and lawfully existing, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

¹ Came into force on 18 March 1985, i.e., one month after the date on which the Parties had notified each other (on 25 January and 18 February 1985) of the completion of their respective domestic requirements, in accordance with article 13 (1).

In respect of the People's Republic of China:

- (a) Individuals who are nationals of the People's Republic of China;
- (b) Companies, enterprises or other economic organizations which are recognized, registered and permitted by the Chinese Government to engage in economic co-operation with foreign countries.

Article 2. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and permit such investments in accordance with its legislation. It shall in any case accord such investments fair and equitable treatment.

Article 3. 1. Investments by investors of either Contracting Party shall not be subject in the territory of the other Contracting Party to treatment less favourable than that accorded to investments by investors of any third State with which the latter Contracting Party has concluded similar agreements.

2. The activity of investors of either Contracting Party in respect of an investment shall not be subject in the territory of the other Contracting Party to treatment less favourable than that accorded to the activity of investors of any third State with which the said other Contracting Party has concluded similar agreements.

3. Such treatment shall not extend to privileges which a Contracting Party accords to investors of any third State by virtue of:

- An existing customs union, a free-trade zone or membership of an economic community;
- A double taxation agreement or other arrangements concerning matters relating to tax;
- Provisions to facilitate frontier traffic.

4. Irrespective of the laws and regulations governing joint ventures with foreign equity or enterprises with exclusively foreign capital, each Contracting Party undertakes not to adopt any discriminatory measures against joint ventures in which equity is held by investors of the other Contracting Party or against investments by investors of the other Contracting Party.

Article 4. 1. Investments by investors of either Contracting Party shall enjoy protection and security in the territory of the other Contracting Party. Investments by investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for the public benefit, in accordance with the legal procedure and against compensation. Such compensation shall be paid without undue delay and shall be actually realizable and freely transferable.

2. Investors of either Contracting Party and joint ventures in which equity is held by investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, a state of national emergency or other comparable events, shall not be subject to any discriminatory treatment by the latter Contracting Party in this connection.

3. Investors of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters governed by this article.

Article 5. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments related to an investment, in particular:

- (a) The principal amount and additional sums serving to maintain or increase the investment;
- (b) The returns;
- (c) The repayment of loans;
- (d) Licence and other fees for the rights defined in article 1, paragraph 1 (d);
- (e) The proceeds of liquidation in the event of total or partial disposal of the investment.

Article 6. If either Contracting Party makes payments to its investors under a guarantee it has given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under article 10, recognize the assignment of any right or claim from such investor to the former Contracting Party, whether under a law or pursuant to a legal transaction. The other Contracting Party shall further recognize the subrogation of the former Contracting Party in respect of any such right or claim (assigned claims) which that Contracting Party may be entitled to assert to the same extent as its predecessor in title. A counter-claim against such right or claim may also be lodged against the former Contracting Party. Article 4 and article 5 shall apply *mutatis mutandis* to the transfer of the amounts payable to the Contracting Party concerned by virtue of the assigned claims.

Article 7. 1. To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under article 4, article 5 or article 6 shall be made without undue delay at the rate of exchange effective for the agreed currency.

2. This rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into special drawing rights.

Article 8. 1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

2. Each Contracting Party shall fulfil any other obligation it may have entered into in respect of investments with investors of the other Contracting Party in its territory; the right of either Contracting Party to amend its general legislation otherwise remains unaffected.

Article 9. This Agreement shall also apply to investments made since 1 July 1979 by investors of either Contracting Party in the territory of the other Contracting Party, consistent with the latter's legislation.

Article 10. 1. Any disputes which may arise between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled by friendly negotiations.

2. If a dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their Chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within three months, from the date on which either Contracting Party has informed the other Contracting Party that it wishes to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Under-Secretary-General next in seniority who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitral tribunal shall base its decision on the provisions of this Agreement, those of other treaties which the two Contracting Parties have concluded and the general rules of international law. It shall reach its decisions by a majority of votes; such decisions shall be final and binding.

6. Each Contracting Party shall bear the cost of its own member and of its Counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be divided equally between the two Contracting Parties.

7. The arbitral tribunal shall determine its own procedure.

Article 11. This Treaty shall remain in force even in the event of a conflict arising between the Contracting Parties, without prejudice to the right to take such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed not later than on the date of the actual termination of the conflict, irrespective of whether or not diplomatic relations are maintained.

Article 12. This Agreement shall, in conformity with the current situation, also apply to Berlin (West).

Article 13. 1. This Agreement shall enter into force one month after the date on which the two Governments notify each other that the internal measures necessary for such entry into force have been completed. It shall remain in force for 10 years, at the expiry of which it shall be deemed to be extended indefinitely, unless it is denounced in writing by either Contracting Party 12 months in advance. After the expiry of the period of 10 years, the Agreement may be denounced at any time. It shall, however, remain in force for one year from the date on which it was denounced.

2. In respect of investments made up until the date of termination of this Agreement, the provisions of articles 1 to 12 shall continue to be effective for 15 years from the date of termination of the Agreement.

DONE at Beijing on 7 October 1983 in duplicate, in the German and Chinese languages, both texts being equally authentic.

For the Federal Republic of Germany:

SCHÖDEL

Count LAMBSDORFF

For the People's Republic of China:

CHEN MUHUA

PROTOCOL

On signing the Agreement concerning the encouragement and reciprocal protection of investments, concluded between the Federal Republic of Germany and the People's Republic of China, the undersigned plenipotentiaries have agreed on the following provisions which constitute an integral part of the said Agreement:

1. *Ad article 1*

(a) Returns from an investment, as well as returns from re-invested returns, shall enjoy the same protection as the original investment;

(b) Any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party.

2. *Ad article 2*

Investments made in accordance with the legislation of either Contracting Party within the area of application of such legislation by investors of the other Contracting Party shall enjoy the full protection of this Agreement.

Investments made in accordance with the legislation of either Contracting Party by investors in territories where the other Contracting Party exercises sovereign rights or sovereign authority shall also enjoy the full protection of this Agreement.

3. *Ad article 3*

(a) The management, maintenance, use and enjoyment of an investment shall more particularly be deemed "activity" within the meaning of article 3, paragraph 2;

(b) Restricting the purchase of raw and auxiliary materials, of power and fuel and of means of production and operation, and any other measures having similar effects, shall, in particular, be deemed "treatment less favourable" within the meaning of article 3, paragraph 2, or "discriminatory measures" within the meaning of article 3, paragraph 4;

Measures that have to be taken by either Contracting Party for reasons of national economic priorities shall not be deemed "discriminatory measures" unless they are specifically directed against investors of the other Contracting Party or against joint ventures in which equity is held by investors of the other Contracting Party.

(c) Measures that have to be taken by either Contracting Party for reasons of security and law and order, public health or morality shall not be deemed "discriminatory measures".

(d) Within the scope of their national legislation, the Contracting Parties shall show sympathetic consideration with respect to entry and residence applications filed by persons from either Contracting Party who wish to enter the territory of the other Contracting Party in connection with the making and carrying through of an investment; the same sympathetic consideration shall be shown towards employees of either Contracting Party who wish to enter and reside in the territory of the other Contracting Party in connection with an investment in order to engage in paid employment. Sympathetic consideration shall also be shown with respect to applications for work permits.

(e) Neither Contracting Party shall, under the provisions of article 3, be obliged to extend to individuals or companies resident or based in the territory of the other Contracting Party tax privileges, exemptions or reliefs which, under its tax laws, are accorded only to individuals or companies resident or based in its territory.

4. *Ad article 4*

(a) The term “expropriation” within the meaning of article 4, paragraph 1, shall also include any nationalization or other measure which is equivalent in effect to expropriation or nationalization.

(b) If expropriation within the meaning of article 4, paragraph 1, is, in the opinion of the investor, not carried out in accordance with the law of the Contracting Party which ordered the expropriation, the legality of such expropriation shall, at the request of the investor, be reviewed by the competent courts of the Contracting Party which ordered the expropriation.

(c) Compensation within the meaning of article 4, paragraph 1, shall be equivalent to the value of the expropriated investment immediately prior to the time when the expropriation was publicly announced. The investor and the other Contracting Party shall hold consultations for the purpose of establishing such value.

If agreement is not reached within six months from the beginning of such consultations, the amount of compensation shall, at the request of the investor, be reviewed either by the competent courts of the Contracting Party which ordered the expropriation or by an international arbitral tribunal.

(d) The international arbitral tribunal referred to in paragraph (c) above shall be constituted for each individual case as follows: each side shall appoint one member, and these two members shall agree upon a national of a third State with which the two Contracting Parties have diplomatic relations as their Chairman. Such members shall be appointed within two months, and such Chairman within three months, from the date on which either side has informed the other that it wishes to submit the dispute to an arbitral tribunal.

If the periods specified in the previous paragraph have not been observed, either side may, in the absence of any other arrangement, invite the Chairman of the International Arbitral Tribunal of the Stockholm Chamber of Commerce to make the remaining necessary appointments.

The arbitration procedure shall be determined by the arbitral tribunal itself, in accordance with the Convention on the settlement of investment disputes between States and nationals of other States of 18 March 1965.¹ The tribunal shall reach its decisions by a majority of votes; such decisions shall be final and binding and shall be enforced in accordance with national legislation. The decision must state the basis on which it was taken and shall, at the request of either side, be explained.

Each side shall bear the cost of its own member and of its Counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be divided equally between the two sides.

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

(e) In situations such as those referred to in article 4, paragraph 2, every possible effort shall be made to ensure that activities related to investments may continue.

5. *Ad article 5*

(a) All repayments of the principal amount and additional sums serving to maintain or increase the investment which are due in accordance with the contracts concluded between those concerned shall be deemed to be payments within the meaning of article 5, paragraph (a).

(b) Any loan in the nature of an investment made available by the investor shall be deemed a loan within the meaning of article 5, paragraph (c).

(c) The statement "Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments related to an investment" in article 5 shall mean, in respect of the People's Republic of China:

Under the foreign-currency regulations in force in the People's Republic of China upon the signature of this Agreement, payments under article 5 shall be transferred abroad from the foreign-currency account of a joint venture or from the foreign-currency account of an enterprise with exclusively foreign capital.

(d) In the exceptional event that a joint venture or an enterprise with exclusively foreign capital has not received sufficient foreign currency for payments under paragraph (c) above, the Chinese Government shall provide the foreign currency required for the transfer in the following cases:

(aa) For payments under article 5, paragraphs (a), (d) and (e);

(bb) For payments under article 5, paragraph (c), if the Bank of China has issued a letter of guarantee;

(cc) For payments under article 5, paragraph (b), if a joint venture or an enterprise with exclusively foreign capital also, with the consent of a competent national authority, sells its products for currency which is not freely convertible.

6. *Ad article 7*

A transfer shall be deemed to have been made "without undue delay" within the meaning of article 7, paragraph 1, if made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant application has been submitted and may not exceed three months, in cases relating to article 5, or six months, in cases relating to article 4 and article 6.

7. Whenever goods or persons connected with the making of investments are to be transported, the Contracting Parties shall neither exclude nor hinder the use of transport agencies of the other Contracting Party. The investor shall be entitled freely to choose which transport agency he uses.

The above provisions include the transportation of:

(a) Goods directly intended for an investment within the meaning of this Agreement or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of this Agreement have been invested;

(b) Persons travelling in connection with the making of investments.

DONE at Beijing on 7 October 1983 in duplicate, in the German and Chinese languages, both texts being equally authentic.

For the Federal Republic of Germany:

SCHÖDEL

Count LAMBSDORFF

For the People's Republic of China:

CHEN MUHUA
