

No. 53515*

**Austria
and
China**

Agreement between the Republic of Austria and the People's Republic of China on the promotion and reciprocal protection of investments (with Protocol). Beijing, 12 September 1985

Entry into force: *11 October 1986, in accordance with article 11*

Authentic texts: *Chinese and German*

Registration with the Secretariat of the United Nations: *Austria, 23 March 2016*

Note: *See also annex A, No. 53515.*

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**Autriche
et
Chine**

Accord entre la République d'Autriche et la République populaire de Chine relatif à la promotion et la protection réciproque des investissements (avec protocole). Beijing, 12 septembre 1985

Entrée en vigueur : *11 octobre 1986, conformément à l'article 11*

Textes authentiques : *chinois et allemand*

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Note : *Voir aussi annexe A, No. 53515.*

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[TRANSLATION – TRADUCTION]

AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE PEOPLE'S
REPUBLIC OF CHINA ON THE PROMOTION AND RECIPROCAL
PROTECTION OF INVESTMENTS

The Republic of Austria and the People's Republic of China,

Desiring to develop economic cooperation between the two States,

Recognizing that the promotion and reciprocal protection of investments may strengthen the readiness for such investments and thereby make an important contribution to the development of economic relations,

Have, following negotiations between representatives of the Governments of the two States, agreed as follows:

Article 1

For the purpose of this Agreement

1. "Investments" means any assets permitted under the applicable laws of a Contracting Party, in particular, although not exclusively:

(a) Movable and immovable property and any other property rights, such as mortgages, pledges, usufruct or similar rights;

(b) Shares and other forms of participation in companies;

(c) Claims to money given for the purpose of generating financial value or to any performance having a financial value;

(d) Copyright, industrial property rights, technical processes, know-how, trademarks and trade names;

(e) Concessions for the exploration and extraction of natural resources.

Any change in the form in which assets are invested does not affect their character as investments.

2. "Returns" means the amounts yielded by an investment, including profits, dividends, interest and other legitimate income.

3. "Investor" means

In respect of the Republic of Austria:

(a) Any natural person who is a national of the Republic of Austria;

(b) Any legal person, organization or association, with or without legal personality, lawfully established in accordance with the laws of the Republic of Austria and having its seat in the territory of the Republic of Austria;

(c) Any legal person, organization or association, with or without legal personality, having its seat in a third country, in which investors referred to in subparagraphs (a) or (b) have a vested interest;

In respect of the People's Republic of China

(a) Any natural person who is a national of the People's Republic of China;

(b) Any legal person, organization or association, with or without legal personality, lawfully established in accordance with the laws of the People's Republic of China and having its seat in the territory of the People's Republic of China;

(c) And any legal person, organization or association, with or without legal personality, having its seat in a third country, in which investors referred to in subparagraphs (a) or (b) have a vested interest.

Article 2

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

2. The Contracting Party shall, in all cases, accord such investments fair and equitable treatment.

3. The investments admitted under paragraph 1 and their returns shall enjoy the full protection of this Agreement. Where proceeds are reinvested, the same shall apply to their returns.

Article 3

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be treated no less favourably than those made by investors of any third State.

2. The activities of investors of one Contracting Party associated with an investment, in particular with regard to its management, application, use and exploitation, shall be treated no less favourably in the territory of the other Contracting Party than those of investors of any third State.

3. Such treatment shall not apply to advantages granted by a Contracting Party to investors of any third State on the basis of:

—A customs union or free trade area or by virtue of belonging to an economic community;

—A double taxation agreement or other arrangements concerning tax matters;

—Arrangements to facilitate border traffic.

4. Without prejudice to the laws and regulations applicable to joint ventures with foreign participation or enterprises with exclusively foreign capital, each Contracting Party undertakes not to take discriminatory measures against joint ventures in which investors of the other Contracting Party have a share or against the investments of investors of the other Contracting Party.

Article 4

1. Investments by investors of one Contracting Party may be expropriated or subject to measures having equivalent effect in the territory of the other Contracting Party only where it is in the public interest and only by means of legal proceedings and accompanied by compensation. Compensation shall be equivalent to the value of the expropriated investment immediately before the expropriation became public knowledge. Compensation shall be made without undue delay and be effectively realizable and freely transferable.

2. Where a Contracting Party expropriates the assets of a company that, within the meaning of article 1, paragraph 3, of this Agreement, is a company of that Contracting Party and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this article are applied to the extent necessary to guarantee appropriate compensation to such nationals or companies of the other Contracting Party.

3. Investors of one Contracting Party and joint ventures in which investors of that Contracting Party have a share whose investments in the other Contracting Party suffer losses owing to war, other armed conflict, state of national emergency or other similar events shall not be accorded by the latter Contracting Party, with regard to any relevant measures it takes, treatment less favourable than that which it accords to investors of any third State.

4. The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party that initiated the expropriation.

5. The investor shall be entitled to have the amount of compensation paid reviewed either by the competent authorities of the Contracting Party that initiated the expropriation or by an international arbitral tribunal.

6. Investors of one 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 relating to an investment, in particular:

- (a) The initial capital and additional amounts serving to maintain or increase an investment;
- (b) Returns;
- (c) Repayments on share-type loans provided by an investor;
- (d) Licence and other fees for the rights referred to in article 1, paragraph 1 (d);
- (e) Proceeds from the sale or liquidation of all or any part of an investment;
- (f) Compensation paid out in accordance with article 4, paragraph 1.

Article 6

Where one Contracting Party or its designated agency makes a payment under an indemnity given to its investors in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize, without prejudice to the rights of the former Contracting Party under article 10, the assignment of any right or claim of such investor, by law or legal transaction, to the former Contracting Party. It shall also recognize the right of the former Contracting Party to exercise such rights and enforce such claims (assigned claims) by virtue of subrogation, to the same extent as its predecessor in title. Counterclaims against those rights or claims may be made to the former Contracting Party. Articles 4 and 5 shall apply analogously to the transfer of payments to the Contracting Party concerned made on the basis of the assigned claims.

Article 7

1. Unless those concerned agree on a more favourable arrangement with the approval of the competent authorities of the Contracting Party in whose territory the investment is located, transfers under articles 4, 5 and 6 shall be carried out without undue delay at the applicable exchange rate for the agreed currency.

2. This rate shall correspond to the cross rate resulting from the exchange rates that would be applied by the International Monetary Fund at the time of payment to convert the currencies concerned into special drawing rights.

Article 8

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

2. Each Contracting Party shall observe any contractual obligation that it has entered into with investors of the other Contracting Party in respect of investments admitted by the former Contracting Party in its territory.

Article 9

This Agreement shall also apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the other Contracting Party prior to the entry into force of this Agreement.

Article 10

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations.

2. Any dispute that cannot be settled within a period of six months shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall be constituted ad hoc, with each Contracting Party appointing one member and those two members agreeing upon a national of a third State having diplomatic relations with both Contracting Parties as chairperson. That person shall be appointed by the Governments of the Contracting Parties. The members shall be appointed within two months of the date on which one Contracting Party has notified the other of its wish to submit the dispute to arbitration, and the chairperson within two months thereafter.

4. If the time limits specified in paragraph 3 of this article have not been observed, 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. Where the President is a national of either Contracting Party or is otherwise 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 make the appointments.

5. The arbitral tribunal shall reach its decision on the basis of this Agreement and other treaties to which the two Contracting Parties are party, as well as on the basis of general rules of international law. It shall do so by a majority of votes and its decision shall be final and binding.

6. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairperson and other costs shall be borne in equal parts by both Contracting Parties.

7. The arbitral tribunal shall determine its own procedures.

Article 11

1. This Agreement shall enter into force one month after the date on which both Governments notify each other that the necessary domestic requirements for its entry into force have been fulfilled. It shall remain in force for a period of 10 years; it shall be extended thereafter for an indefinite period, unless one of the two Contracting Parties denounces the Agreement in writing with 12 months' notice. The Agreement may be denounced at any time after 10 years have elapsed but shall remain in force for a further period of one year after its denunciation.

2. In respect of investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 10 shall remain in force for a further period of 15 years from the date of its termination.

DONE at Beijing on 12 September 1985, in two originals, each in the German and Chinese languages, both texts being equally authentic.

For the Republic of Austria:

NORBERT STEGER

For the People's Republic of China:

ZHENG TUOBIN

PROTOCOL

ON THE SIGNING OF THE AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE PEOPLE'S REPUBLIC OF CHINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS, THE UNDERSIGNED PLENIPOTENTIARIES HAVE ALSO AGREED ON THE FOLLOWING ARRANGEMENTS, WHICH CONSTITUTE AN INTEGRAL PART OF THE AGREEMENT:

Ad article 2 of the Agreement

Investments made in accordance with the laws of a Contracting Party by investors in territories in which that Contracting Party exercises jurisdiction or sovereignty shall also enjoy the full protection of this Agreement.

Ad article 3 of the Agreement

(a) Restrictions on the procurement of raw and auxiliary materials, energy, the means of production and equipment and measures having equivalent effect, in particular, shall be deemed to be "treatment less favourable" within the meaning of article 3, paragraph 2, or "discriminatory measures" within the meaning of article 3, paragraph 4;

(b) Measures taken by a Contracting Party for the following reasons shall not be deemed to be "discriminatory measures":

—Reasons of public safety and order, or public health and morals

—Matters of economic priority, provided that they are not specifically directed against investors of the other Contracting Party or against joint ventures in which investors of the other Contracting Party have an interest

(c) Persons who need to conduct activities relating to the planning and implementation of investments in the territory of the other Contracting Party shall, within the framework of the law, be granted visas by that Contracting Party as swiftly as possible. Applications for work permits, where they are necessary, shall be accorded sympathetic consideration and resolved promptly by that Contracting Party;

Ad article 4 of the Agreement

(a) Article 4, paragraph 1, shall apply to investors of either Contracting Party who have a predominant interest in a legal person, organization or association, with or without legal personality, of a third State, where the other Contracting Party expropriates investments of that third State legal person, organization or association. The provisions governing compensation shall apply, however, only where such legal person, organization or association of the third State, or the third State itself, is not entitled to compensation or the third State waives such entitlement.

(b) The international arbitral tribunal referred to in article 4, paragraph 5, shall be constituted ad hoc, with each side appointing one member and those two members agreeing upon a national of a third State having diplomatic relations with both Contracting Parties as chairperson. The members shall be appointed within two months of the date on which the investor has notified the other Contracting Party of his or her wish to submit the dispute to arbitration, and the chairperson shall be appointed within two months thereafter.

Where the time limits laid down in the previous paragraph have not been observed, either side may, in the absence of any other arrangement, invite the Chairperson of the Arbitration Institute of the Stockholm Chamber of Commerce to make the remaining necessary appointments.

The arbitral tribunal shall establish its own rules of procedure in analogous application of the procedural rules under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965. The tribunal shall reach its decision by a majority of votes; its decision shall be final and binding and shall be enforced in accordance with national law. The grounds for the decision shall be set forth therein and either side may request an explanation thereof.

Each side shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the chairperson and other costs shall be borne in equal parts by the two sides.

Ad article 5 of the Agreement

The statement “Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to an investment” under article 5 shall mean, in respect of the People’s Republic of China:

1. The competent Chinese government authorities shall guarantee the free transfer in convertible currency of compensation paid under article 5 (f).

2. (a) To the extent that the foreign exchange regulations of the People’s Republic of China do not provide for more favourable arrangements, a payment made under article 5 (a–e) shall be transferrable abroad under the current regulations from the foreign currency account of a joint ventures or the foreign currency account of an enterprise with exclusively foreign capital.

(b) Where such an enterprise does not have at its disposal sufficient foreign currency in their accounts to make a payment under paragraph 2 (a) of this article, the Chinese Government shall provide the foreign currency required for such transfers in the following cases:

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

—For payments under article 5 (c) where the Bank of China has provided a guarantee;

—For payments under article 5 (b) where a joint venture or an enterprise with exclusively foreign capital has a special authorization from a competent State entity to sell its products for non-convertible currency.

Ad article 7, paragraph 1, of the Agreement

A transfer shall be deemed to have been made “without undue delay” within the meaning of article 7, paragraph 1, when it is carried out within a time period in compliance with the usual requirements for such transfers. That time period begins upon submission of the appropriate application and shall not exceed three months in the cases referred to in article 5 (a)–(e) or six months in the cases referred to in article 5 (f).

DONE at Beijing on 12 September 1985, in two originals, each in the German and Chinese languages, both texts being equally authentic.

For the Republic of Austria:

NORBERT STEGER

For the People’s Republic of China:

ZHENG TUOBIN

