

# **AGREEMENT BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC OF TUNISIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The People's Republic of China and the Republic of Tunisia (hereinafter referred to as the Contracting Parties). Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party; Recognizing that the reciprocal promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States; Desiring to intensify the economic co-operation of both States on the basis of equality and mutual benefits; Have agreed as follows:

## **Article 1 Definitions For the purpose of this Agreement:**

(1) The term "Investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter, and in particular, though not exclusively, includes:

- (a) movable and immovable property as well as other rights in rem, such as, mortgages, pledges and liens;
- (b) shares, stocks and any other kind of participation in companies;
- (c) claims to money or to any other performance having an economic value;
- (d) intellectual property rights, including copyrights, patents, trade marks, trade names, technological process, know-how and good will;
- (e) concessions conferred by law or under contract permitted by law, including concessions to search for, or exploit natural resources. Any change in the form in which assets are invested shall not affect their character as investments, provided that such change is not contrary to the laws and regulations of the host country.

(2) The term "Investor" means:

- (a) any natural person who has the nationality of one Contracting Party in accordance with the laws and regulations of one Contracting Party;
- (b) any legal person or economic entity incorporated or constituted under the laws and regulations of the Contracting Party, irrespective of whether or not for profit and whether its liabilities are limited or not.

(3) The term "Return" means the amounts yielded by investments, such as profits, dividends, interests, royalties or fees.

(4) The term "Territory" means, as regards of each Contracting Party, the territory under its sovereignty including adjacent seas and submarine areas and other seaside areas over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2 Promotion and Protection of Investment**

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

(2) Investments of the investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(3) Each Contracting Party shall ensure that the management, maintenance, use, enjoyment, or disposal of investment in its territory of investors of the other Contracting Party, shall not in any way be impaired by any unreasonable or discriminatory measures.

### Article 3 Treatment of Investment

- (1) Investments of investors of each Contracting Party shall at all time be accorded fair and equitable treatment in the territory of the other Contracting Party.
- (2) Each Contracting Party shall accord to investments and investors of the other Contracting Party treatment no less favorable than that accorded to investments and investors of any third State.
- (3) The provisions of Paragraph (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investments and investors of the other Contracting Party, the benefit of any treatment, preference or privilege by virtue of:
  - (a) any existing or future customs union, common market, free trade zone or other similar international agreement to which either of the Contracting Party is or may become a party, or any other form of regional economic organization;
  - (b) any international agreement or arrangement relating wholly or mainly to taxation;
  - (c) any international agreement or arrangement for facilitating frontier trade.

### Article 4 Expropriation

- (1) Neither Contracting Party shall expropriate, nationalise or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met:
  - (a) for the public interests
  - (b) under domestic legal procedure
  - (c) without discrimination
  - (d) against compensation
- (2) The compensation mentioned in Paragraph 1 of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, which is earlier. The value shall be determined in accordance with generally recognized principles of valuation. The compensation shall be made without delay, be effectively realisable and freely transferable.
- (3) The investor affected shall have a right to access, under the law of the Contracting Party making the expropriation, to the competent court of that Contracting Party, in order to review the amount of compensation and the legality of any such expropriation.

### Article 5 Compensation for Damages and Losses

- (1) Investors 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, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to the investors of its own or any third State. The compensation shall be freely transferable.

### Article 6 Repatriation of Investments and Returns

- (1) Each Contracting Party shall guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, particularly though not exclusively:
  - (a) profits, dividends, interests and fees;
  - (b) proceeds of total or partial sale or liquidation of investments;
  - (c) payments made pursuant to loan agreement in connection with an investment;
  - (d) royalties in connection with paragraph 1 (d) of Article 1;
  - (e) payments of technical assistance; (f) payments in connection with projects on contract;
  - (g) compensation paid under Article 4 and 5 of this agreement

(h) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of one Contracting Party in accordance with the laws and regulations of this latter.

(2) The Contracting Parties shall further ensure that transfers referred to in paragraph 1 of this Article shall be made without undue delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer.

**Article 7 Subrogation** If a Contracting Party or its Agency makes a payment to its investor in the territory of the other Contracting Party, such other Contracting Party shall recognise the transfer of any right or claim of such investor to the former Contracting Party or its Agency, and recognise 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 8 Settlement of Disputes between Contracting Parties**

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through 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 comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting arbitration from the other Contracting Party, 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 having diplomatic relations with both Contracting parties as Chairman of the arbitral tribunal.

(4) If the arbitral tribunal has not been constituted within four months from 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 appoint the arbitrator (s) who has or have not been appointed. 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 or is not otherwise prevented from discharging the said function shall be invited to make such necessary appointments.

(5) The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognised by both Contracting Parties.

(6) The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

(7) Each Contracting party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties.

#### **Article 9 Settlement of Disputes between investors and one Contracting Party**

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party, related to an investment, shall be as far as possible settled amicably through negotiations.

(2) If the dispute cannot be settled amicably through negotiations within six months from the date it has been raised by either party to the dispute, it shall be submitted: -to the competent court of the Contracting Party that is party to the dispute; or -to the International Center for settlement of Investment Disputes (the Center) under the Convention on the Settlement of Disputes between States and Nationals of Other States,

done at Washington on March 18, 1965; Once the investor has submitted the dispute to the jurisdiction of the concerned Contracting Party or to the Center, the choice of one of the two procedures shall be final.

#### Article 10 Other Obligations

(1) If the provisions of law 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 made by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such provisions shall prevail over this Agreement.

(2) Each Contracting Party shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards to their investments.

(3) Investments subject to the commitments mentioned in the previous Paragraph shall be governed, without prejudice to the provisions of this Agreement, by the terms of those commitments insofar as their provisions are more favorable than those provided by this Agreement.

Article 11 Other Provision Investors of one Contracting Party shall enjoy the most favored-nation treatment in the territory of the other Contracting Party in respect of all the matters subject to this Agreement.

Article 12 Application This Agreement shall apply to investments, which are made by investors of either Contracting Party in the territory of the other Contracting Party after 8th of July in 1979 in the People's Republic of China and after 1st January 1957 in the Republic of Tunisia. However the Agreement shall not apply to any dispute concerning an investment which arose before its entry into force.

#### Article 13 Entry into force, Duration and Termination

(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 to each other in writing that their respective internal legal procedures necessary for its entry into force have been fulfilled and remain in force for a period of ten years.

(2) This Agreement shall continue 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 of the period specified in Paragraph 1 of this Article.

(3) After the expiration of initial ten years 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) With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination. In Witness Whereof the duly authorised representatives of their respective Governments, have signed this Agreement. Done in duplicate at Tunisia on 21 June 2004 in the Chinese, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For The People's

Republic of China

For The People's Republic

of Tunisia

## **Protocol to the Agreement Between the People's Republic of China and the Republic of Tunisia for the Reciprocal Encouragement and Protection of Investments**

On signing the Agreement between the People's Republic of China and the Republic of Tunisia for the Reciprocal Encouragement and Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

Ad article 6 Notwithstanding the provisions of paragraph 2 of Article 6 of the Agreement, the transfer shall comply with relevant procedures stipulated by the existing laws and regulations relating to foreign exchange administration of the host country. Such procedures must not be carried out in any way to impair or derogate from the principles of free and undue delayed transfer.

Ad article 9

1. The Republic of Tunisia takes note of the statement that the People's Republic of China requires that the investor concerned exhausts the domestic administrative review procedure specified by the laws and regulations of the People's Republic of China, before submission of the dispute to international arbitration under Article 9 paragraph (2). The People's Republic of China guarantees that such a procedure will take a maximum period of three months.

2. The procedure specified in paragraph 1 allows the investor to apply to the competent administrative authorities but in any way to judicial authorities for settlement of the dispute.

3. If the dispute still exists after the maximum period of the administrative procedures specified in paragraph 1, the investor may submit the dispute to the competent court or to the International Center for Settlement of Investment Disputes for arbitration according to article 9 paragraph (2) of the Agreement. In Witness Whereof the duly authorised representatives of their respective Governments, have signed this Agreement. Done in duplicate at Tunis on 21 June 2004 in the Chinese, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail. For the People's

For the People's Republic of China

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The Government of the People's Republic of China 2004-06-21