

中华人民共和国和日本国关于鼓励和 相互保护投资协定(附英文)

辽宁电子图书有限责任公司编

辽宁电子图书有限责任公司

中华人民共和国和日本国关于鼓励和
相互保护投资协定(附英文)

辽宁电子图书有限责任公司编

责任编辑：孟厦

辽宁电子图书有限责任公司

2003年12月第 版 2003年12月第 次印刷

开本:850×1168毫米 1/ 印张:

字数：60 千字 印数：

ISBN L-FL-0467/ D92 定价：3.00 元

中华人民共和国和日本国关于鼓励和 相互保护投资协定(附英文)

(1988年8月27日签订,1989年5月14日生效)

中华人民共和国政府和日本国政府,希望加强两国间的经济合作,愿意通过给予投资、与投资有关的业务活动和投资财产以良好的待遇和保护,为各自国家的国民和公司在另一方境内投资创造良好的条件,认识到鼓励和相互保护投资会促进两国间的经济和技术的交流,经过两国政府代表的谈判,达成协议如下:

第一条 本协定内:

(一)“投资财产”,系指缔约一方国民或公司在缔约另一方境内,在进行投资时,依照或不违反该缔约另一方法律和法规用作投资的所有种类的资产,包括:

- (1) 股份和其他形式的公司份额;
- (2) 金钱债权和根据具有金钱价值的合同给付的请求权;
- (3) 有关动产和不动产的权利;
- (4) 专利权、商标权、有关商名和服务标记的权利及其他工业产权和有关专有技术的权利;
- (5) 包括勘探和开采自然资源的权利在内的特许权。

(二)“收益”,系指由投资财产所产生的价值,特别是指利润、利息、资本利得、股息、使用费和手续费。

(三)“国民”,对缔约一方系指具有该缔约一方国籍的自然人。

(四)“公司”

(1) 在中华人民共和国方面，系指企业、其他经济组织和社团。

(2) 在日本国方面，系指社团法人、合伙、公司和团体，不论其是否有限责任、是否法人或是否以营利为目的。

根据缔约一方有关法律和法规设立并在该缔约一方境内具有住所的公司应视为该缔约一方的公司。

第二条

一、缔约各方应尽可能促进缔约另一方国民和公司在其境内投资，并根据本国的有关法律和法规给予许可。

二、缔约任何一方国民和公司，在缔约另一方境内，关于投资许可和与投资许可有关的事项，享受不低于第三国国民和公司的待遇。

第三条

一、缔约任何一方在其境内给予缔约另一方国民和公司就投资财产、收益及与投资有关的业务活动的待遇，不应低于给予第三国国民和公司的待遇。

二、缔约任何一方在其境内给予缔约另一方国民和公司就投资财产、收益及与投资有关的业务活动的待遇，不应低于给予该缔约一方国民和公司的待遇。

三、本条所述的“与投资有关的业务活动”包括：

(1) 维持分公司、代理店、办事处、工厂和其他用于业务活动的适当的设施；

(2) 控制和经营自己设立或取得的公司；

(3) 雇用和解雇专家，包括技术人员、高级职员和律师，及其他职工；

(4) 缔结和履行合同。

第四条 缔约任何一方国民和公司在缔约另一方境内，为行使和维护自身的权利，在请求或接受法院审理和向行政机构提出申诉的权利方面的待遇，不应低于该缔约另一方给予其国

民和公司或第三国国民和公司的待遇。

第五条

一、缔约任何一方国民和公司的投资财产和收益，在缔约另一方境内，应始终受到保护和保障。

二、缔约任何一方国民和公司的投资财产和收益，在缔约另一方境内，只有为了公共利益，依照法律和法规，是非歧视性的并给予补偿，方可被采取征收、国有化或其他类似效果的措施。

三、本条第二款所述的补偿，应使该国民和公司处于未被采取本条第二款所述的征收、国有化或其他类似效果的措施时相同的财政状况。补偿不得迟延。补偿应能有效地兑换和自由转移，兑换和转移时所使用的汇率按确定补偿价款之日使用的有效汇率。

四、缔约任何一方国民和公司，当其投资财产和收益被采取征收、国有化或其他类似效果的措施时，有权就这些措施和补偿的价款，根据采取这些措施的缔约另一方的有关法律和法规，请求或接受该缔约另一方有管辖权的法院的审理，或向有权限的行政机关提出申诉。五、缔约任何一方在其境内，关于本条第一款至第四款规定的事项，给予缔约另一方国民和公司的待遇，不应低于给予第三国国民和公司的待遇。

第六条 缔约任何一方国民和公司，在缔约另一方境内，由于发生敌对行为或国家紧急状态而使其投资财产、收益或与投资有关的业务活动受到损害，如该缔约另一方就发生敌对行为或国家紧急状态而采取任何措施时，享受不低于第三国国民和公司的待遇。

第七条 缔约任何一方根据对其国民或公司在缔约另一方境内的投资财产和收益所承担的保证支付款项时，该缔约另一方应承认该国民或公司对此项投资财产和收益的权利或请求权因上述支付而转移给该缔约一方，并应承认该缔约一方由此产

生的对该国民或公司的请求权和诉讼权的代位。

关于根据上述权利或请求权的转移而向缔约一方支付的款项的转移，准用第五条第二款至第五款和第八条的规定。

第八条

一、缔约任何一方应保证缔约另一方国民和公司在缔约双方境内之间以及该缔约一方境内和第三国境内之间进行支付、汇款以及包括投资财产的清算价款在内的金钱证券或资金的自由转移。

二、本条第一款的规定，不妨碍缔约任何一方根据本国有关法律和法规，施行外汇限制。

第九条 本协定也适用于本协定生效之前在 1972 年 9 月 29 日以后缔约任何一方的国民和公司在缔约另一方境内依照该缔约另一方的有关法律和法规取得的投资财产和收益。

第十条 本协定不论缔约双方有无外交关系或领事关系同样适用。

第十一条

一、关于在缔约任何一方境内的缔约另一方国民或公司的投资，该缔约一方和该缔约另一方国民或公司之间发生的争端，应尽可能通过争端当事者之间的友好协商解决。

二、缔约任何一方或根据其法律和法规其他承担补偿义务者和缔约另一方国民或公司关于第五条第三款所述的补偿价款的争端，如果当事任何一方提出为解决争端进行协商的 6 个月内未能解决，则根据该国民或公司的要求，可提交参考 1965 年 3 月 18 日在华盛顿签订的《关于解决国家和他国国民之间投资争端公约》（以下称“华盛顿公约”）而组成的调解委员会或仲裁委员会。缔约任何一方和缔约另一方国民或公司关于其他事项的争端，可根据当事双方的同意，提交如上所述的调解委员会或仲裁委员会。

如果该缔约另一方国民或公司在该缔约一方境内求助于行

政或司法解决时，该争端不得提交仲裁。

三、第二款所述的仲裁委员会，由 3 名仲裁员组成：当事双方各委任 1 名仲裁员，该两名仲裁员应自当事一方收到另一方要求将争端提交第二款所述仲裁的通知之日起 60 天内委任，该两名仲裁员在其后 90 天内一致同意决定另一名非缔约任何一方国民的第三名仲裁员为首席仲裁员。

四、如果当事各方委任的仲裁员未能在第三款规定的其后 90 天内就第三名仲裁员取得一致意见，当事任何一方均可请求当事双方事先所同意的第三者委任与缔约双方均有外交关系的第三国国民为仲裁员。

五、仲裁程序由仲裁委员会参考华盛顿公约制定。

六、仲裁委员会的裁决是终局的，具有拘束力。仲裁委员会裁决的执行，应根据被要求在其境内执行裁决的国家有效的关于执行裁决的法律和法规进行。仲裁委员会应陈述其裁决的依据，并应当事任何一方的要求说明理由。

七、当事各方应各自负担其仲裁员和参与仲裁过程的费用，首席仲裁员履行其职务的费用和仲裁委员会的其他费用应由双方平均负担。

八、在实施本条第二款所述的交付仲裁委员会的情况下，国家之间不得提出有关该案件的请求。

第十二条 缔约任何一方国民或公司拥有实质利益的第三国公司，在缔约另一方境内，除非该缔约另一方和该第三国之间具有有效的关于投资和保护投资财产的国际规定，应享受如下待遇：

(1) 关于第二条第二款、第三条、第五条第一款至第四款、第六条及第九条规定的事项，不低于第三国国民或公司拥有实质利益的其他第三国公司在该缔约另一方境内享受的待遇。

(2) 关于第三条、第五条第一款至第四款、第六条和第九条规定的事项，不低于该缔约另一方国民或公司拥有实质利益

的第三国公司在该缔约另一方境内享受的待遇。

第十三条

一、缔约各方对缔约另一方提出的有关影响本协议适用问题的建议，应给予善意的考虑，并提供适当的机会进行协商。

二、缔约双方对本协议的解释或适用发生争端，在通过外交谈判未能圆满调整时，应提交仲裁委员会裁决。

该仲裁委员会由 3 名仲裁员组成：由缔约双方在缔约任何一方收到缔约另一方要求仲裁通知之日起 60 天内各任命 1 名仲裁员，再由该两名仲裁员在其后 90 天内一致同意的非缔约任何一方国民的第三名仲裁员作为首席仲裁员。

三、在缔约各方所任命的仲裁员未能在第二款规定的其后 90 天内就第三名仲裁员取得一致时，则缔约双方应请求国际法院院长任命非缔约任何一方国民的第三名仲裁员。

四、仲裁委员会应以多数票作出裁决。裁决是终局的，具有拘束力。

五、仲裁程序由仲裁委员会制定。

六、缔约各方各自负担其仲裁员和参与仲裁过程的费用，首席仲裁员履行其职务的费用和仲裁委员会的其他费用由双方平均负担。

第十四条 缔约双方设立由缔约双方政府代表组成的联合委员会，其任务是研究本协议的执行情况及有关两国间投资的事项；结合一方或双方国家关于接受外国投资的法律制度或政策的发展，就本协议的适用及与本协议适用有关的事项进行磋商；并在必要时向缔约双方政府提出适当的建议。联合委员会根据缔约任何一方的要求在北京和东京轮流举行。

第十五条

一、本协议自缔约双方各自履行完毕为生效所需的国内法律程序并交换确认通知之日起 30 天后生效。本协议有效期为 10 年。10 年以后，在根据本条第二款的规定终止之前，本协议

继续有效。

二、在本协定最初 10 年期满时或其后任何时期，缔约任何一方均可以书面提前 1 年通知缔约另一方终止本协定。

三、对于本协定终止之日前取得的投资财产和收益，本协定第一条至第十四条的规定，自本协定终止之日起继续有效 15 年。

由各自政府正式授权的签署人在本协定上签字，以资证明。

议 定 书

当此中华人民共和国和日本国关于鼓励和相互保护投资协定（以下称“协定”）签订之际，签字者同意下列各项作为不可分割的组成部分。

一、协定的任何规定都不应解释为在著作权方面给予任何权利或承担任何义务。

二、只要 1883 年 3 月 20 日在巴黎签署的关于保护工业产权公约的规定或其后修改的规定在缔约双方之间有效时，协定的任何规定不应解释为影响到缔约任何一方根据该公约的规定对缔约另一方所承担的义务。

三、关于协定第三条第二款的规定，缔约任何一方，根据有关法律和法规，为了公共秩序、国家安全或国民经济的正常发展，在实际需要时，给予缔约另一方国民和公司的差别待遇，不应视为低于该缔约一方国民和公司所享受的待遇。

四、协定第三条第二款的规定，不应妨碍缔约任何一方规定关于外国人及外国公司在其境内活动的特别手续。但是，该手续不应在实质上损害该条第二款规定的权利。

五、缔约任何一方，对希望在其境内进行投资和与投资有关的业务活动的缔约另一方国民的入境、逗留和居住的申请，

应根据其有关法律和法规给予善意的考虑。

六、尽管有协定第三条的规定，缔约任何一方根据对等原则或依照避免双重征税和防止偷税漏税协定，均可保留给予特别税收优惠的权利。

七、协定第八条第二款的规定不影响缔约任何一方作为国际货币基金协定的缔约国关于外汇限制具有或可能具有的权利和义务。

八、协定第十一条第一款的规定，不得解释为妨碍缔约任何一方的国民和公司在缔约另一方境内可以寻求行政或司法解决。

九、协定第十二条所述的“实质利益”，系指达到能够控制公司或对其有决定性影响的程度的利益。缔约任何一方国民或公司拥有的利益是否相当于“实质利益”，应根据各个情况分别由缔约双方协商决定。

由各自政府正式授权的签署人在本议定书上签字，以资证明。

本议定书于 1988 年 8 月 27 日在北京签订，一式两份，每份都用中文、日文和英文写成，三种文本具有同等效力，如在解释上发生分歧，以英文本为准。

会谈纪要

签字者就今天签订的中华人民共和国和日本国关于鼓励和相互保护投资协定(以下简称“协定”谈判中达成的谅解纪要)如下：

一、缔约双方确认，缔约任何一方的国民或公司在缔约另一方境内，依照或不违反该缔约另一方当时的法律和法规设立的常驻代表机构的财产，也享受协定的保护。

二、缔约双方确认，协定第三条第二款所述的“低于给予该缔约一方国民和公司的待遇”包括对下述活动差别性地采取限制或妨碍措施：采购原材料或辅料、电力或燃料、各类生产或操作工具；在国内外销售产品；在国内外借款；引进技术；在国外设立分支机构。

本款不得影响协定义定书三规定的适用。

三、关于协定第五条，缔约双方确认该条第三款所述的补偿必须是与征收、国有化或其他类似效果的措施被公布或者被采取时（先者为准）的投资财产和收益相当的款额，并包括考虑到付款前期间的适当利息。

四、协定第五条第三款中所述的“不得迟延”，不排除在决定款额及支付方法等方面所需要的合理时间。

**AGREEMENT BETWEEN THE PEOPLE'S
REPUBLIC OF CHINA AND
JAPAN CONCERNING THE
ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENT**

Whole Doc.

The Government of the People's Republic of China and the Government of Japan, Desiring to strengthen economic cooperation between the two countries, Intending to create

favorable condition for investment by nationals and companies of each country within the territory of the other country, by means of the favorable treatment for and the protection of investment, business activities in connection there with and investments, and Recognizing that the encouragement and reciprocal protection of investment will stimulate economic and technological exchanges between the Two countries, after the negotiations between the representatives of respective Governments, Have agreed as follows:

Article 1

For the purposes of the present Agreement:

(1) The term "investments" comprises every kind of asset, used as investment by nationals or companies of one Contracting Party within the territory of the other Contracting Party in accordance with, or not in violation of the laws and regulations of the latter Contracting Party at the time of investment, including:

- (a) shares and other types of holding of companies;
- (b) claims to money or to any performance under contract having a financial values;
- (c) rights with respect to movable and immovable property;
- (d) patents of invention, rights with respect to trade marks, trade names, service marks and any other industrial property, and rights with respect to know-how; and
- (e) concession rights including those for the exploration and exploitation of natural resources.

(2) The term "returns" means the amounts yielded by an

investment, in particular, profit, interest, capital gains, dividends royalties and fees.

(3) The term “nationals” means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party.

(4) The term “companies” means:

(a) in relation to the People's Republic of China, enterprises, other economic organizations and associations; and

(b) in relation to Japan, corporations, partnerships, companies and associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit.

Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2

1. Each Contracting Party shall within its territory promote as far as possible investment by nationals and companies of the other Contracting Party and admit such investment in accordance with the applicable laws and regulations of the former Contracting Party.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment to less favorable than that accorded to nationals and companies of any third country in respect of the admission of investment and the matters in connection therewith.

Article 3

1. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favorable than that accorded to nationals and companies of any third country.

2. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favorable than that accorded to nationals and companies of the former Contracting Party.

3. The term "business activities in connection with the investment" referred to in the provisions of the present Article includes:

(a) the maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;

(b) the control and management of companies which they have established or acquired;

(c) the employment and discharge of specialists including technical experts, executive personnel and attorneys, and other workers;

(d) the making and performance of contracts.

Article 4

The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies both in pursuit and in defense of their rights shall not be less favorable than that accorded to nationals and companies of the former Contracting Party or to nationals and companies of any third country.

Article 5

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting Party.

2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, within the territory of the other Contracting Party unless such measures are taken for a public purpose and in accordance with laws and regulations, are not discriminatory, and, are taken against compensation.

3. The compensation referred to in the provisions of paragraph 2 of the present Article shall be such as to place the nationals and companies in the same financial position as that in which the nationals and companies would have been if expropriation, nationalization or any other measures the

effects of which would be similar to expropriation or nationalization, referred to in the provisions of paragraph 2 of the present 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 amount of compensation.

4. Nationals and companies of either Contracting Party whose investments and returns are subjected to expropriation, nationalization or any other measures the effects of which would be similar to expropriation or nationalization, shall have the right of access to the competent courts of justice and administrative tribunals and agencies of the other Contracting Party taking the measures concerning such measures and the amount of compensation in accordance with the applicable laws and regulations of such other Contracting Party.

5. The treatment accorded by either Contracting Party within its territory to nationals and companies of the other Contracting Party with respect to the matters set forth in the provisions of paragraphs 1 to 4 of the present Article shall not be less favorable than that accorded to nationals and companies of any third country.

Article 6

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns or business activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall, in case any

measure is taken by the latter Contracting Party in relation to the outbreak of such hostilities or state of such national emergency, be accorded treatment no less favorable than that accorded to nationals and companies of any third country.

Article 7

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such transfer or right or claim, the provisions of paragraphs 2 to 5 of Article 5 and Article 8 shall apply mutates mutans.

Article 8

1. Nationals and companies of either Contracting Party shall be guaranteed by the other Contracting Party freedom of payments, remittances, and transfers of financial instruments or funds including value of liquidation of an investment between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third