

中华人民共和国政府与澳大利亚政府相互 鼓励和保护投资协定(附英文)

辽宁电子图书有限责任公司编

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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: 16千字 印数:

I SBN L-FL-0466/ D92 定价:3.00 元

中华人民共和国政府与澳大利亚政府 相互鼓励和保护投资协定(附英文)

(1988年7月11日签订,同时生效)

中华人民共和国政府和澳大利亚政府(以下称“缔约双方”)认识到为经济活动和发展而促进资本流动的重要性,并意识到其对缔约双方在发展经济关系和技术合作,尤其是缔约一方国民在缔约另一方领土内的投资的作用;考虑到应遵循国际上接受的相互尊重主权、平等、互利、非歧视和相互信任的原则促进投资关系与加强经济合作;认识到缔约一方国民在缔约另一方领土内的投资应在缔约另一方法律范围内进行;承认在缔约双方领土内对保护投资和有关活动的原则的明确声明,和为更有效地适用这些原则所制定的规定,将有助于达到上述目标;缔约双方达成协定如下:

第一条 定义

一、本协定内:

(一)“公司”系指任何按下列方式正式组建、组成、设立或以其他方式正式组织的公司、社团、合伙、信托或其他法律认可的实体:

1. 依照缔约一方的法律,或

2. 依照第三国法律并由本条第一款第(一)项所述实体或按缔约一方法律为其公民或永久居民的自然人所拥有、或控制的。

而不论该实体是否为获利而组建、或是私有或其他形式所拥有、或是有限或无限责任。

(二)“投资”系指各种资产,为缔约一方的国民所拥有、控制或投入,并为缔约另乙方依照其随时适用的法律和投资政策所接受,包括:

1. 有形和无形财产,包括权利,例如抵押权、留置权、质权;

2. 公司,股票,在公司的其他利益,或在该公司财产中的利益;

3. 对金钱的请求权,或有经济价值的行为请求权;

4. 知识产权和工业产权,包括与版权、专利、商标、商名、工业设计、贸易秘密、专有技术和商誉有关的权利;

5. 法律或法律允许按照合同赋予的任何权利,包括从事农业、林业、畜牧业、渔业的权利,勘探、开采或开发自然资源的权利以及制造、使用和销售产品的权利;

6. 用于再投入的收益。

投资或再投资财产形式上的任何变化都不应影响其作为投资的性质。

(三)“法律”包括法规。

(四)缔约一方的“国民”系指依照缔约一方法律为其公民或永久居民的自然人,或公司。

(五)“收益”系指由投资所产生的或与投资有关的款项,包括利润、股息、利息、资本利得、使用费、管理和技术援助费、实物的支付和其他所有合法收入。

(六)“与投资有关的活动”依照接受投资缔约一方的法律,包括组织、控制、经营、维护和处置公司、分支机构、代理、办事处、工厂,或进行业务的其他设施;制定、履行和执行合同;取得、

使用、保护和处置所有各类财产，包括工业产权和知识产权，借入资金，购买和发行股票，购买和出售外汇。

(七) 缔约一方“领土”包括该缔约方行使其主权、主权权利或管辖权的领海、海域或大陆架。

二、本协定将不适用本条第一款第(一)项2所指的依照第三国法律组织的公司，如已援引与该第三国投资保护协定有关该事宜的规定。

三、本协定将不适用于为缔约一方永久居民而非公民的自然人，假如：

(一) 已援引了缔约另一方与该自然人的国籍国间的投资保护协定中的有关该事宜的规定；

(二) 该自然人是缔约另一方的公民。

第二条 鼓励和接受投资

一、缔约一方应在其领土内鼓励和促进缔约另一方国民的投资，并应依照其随时适用的法律和投资政策接受投资。

二、缔约一方保留拒绝接受缔约另一方任何公司的投资的权利，若任何第三国的国民控制着该公司，或该公司在缔约另一方领土内无实质的商业活动。

三、本协定不应影响缔约一方在其领土内允许或禁止第三国国民进行投资的权利。

四、本协定不应妨碍缔约一方国民适用缔约另一方比本协定规定更优惠的任何法律或政策的规定。

五、依照缔约一方法律正式组建的公司不应被视为缔约另一方的国民，但缔约另一方国民在该公司中的投资应受本协定保护。

第三条 投资待遇

缔约一方应始终：

(一) 保证其领土内的投资和与投资有关的活动得到公正和公平的待遇；

(二) 对其领土内的投资和与投资有关的活动提供保护与保障，并在不损害其法律的前提下，不应以不合理或歧视性措施损害对投资的管理、维护、使用、享有和处置；

(三) 在其领土内，给予投资和与投资有关活动的待遇，包括第八条中的补偿，第十条中的转移，应不低于给予任何第三国国民的投资和投资有关活动的待遇，但缔约一方无义务因下述情况所产生的待遇、特惠或特权给予投资或与投资有关活动：

1. 缔约一方参加的任何关税同盟、经济联盟、自由贸易区或区域性经济一体化的协定；

2. 和第三国签定的避免双重税收协定的规定。

第四条 人员的入境和居留

一、缔约一方应依照有关非本国公民的入境和居留随时适用的法律和 policy，允许作为缔约另一方国民的自然人和另一方公司雇用的雇员为从事与投资有关的目的入境和在其境内居留。

二、在符合本条第一款条件下，缔约一方应允许在其领土内有投资的缔约另一方国民在其领土内聘用关键的技术和管理人员，而无论被选人员的国籍。

第五条 缔约双方国民间争议的解决

缔约一方应依照其法律：

(一) 使其领土内进行投资的缔约另一方国民和其雇用从事与投资有关活动的雇员在和其国民的争议中，可以完全在其有管辖权的司法或行政机关进行诉讼，以提供维护请求权和执行权利的方式。

(二) 允许其国民选择和缔约另一方国民有关投资和与投资活动的争议的解决方式，包括在第三国进行仲裁。

(三) 为承认和执行任何由此产生的判决或裁决作出规定。

第六条 法律的透明度

缔约各方为了促进了解有关或影响缔约另一方国民在其领土内的投资的法律和政策，应：

- (一) 公开并随时提供该法律和政策；
- (二) 应缔约另一方要求，向其提供具体的法律和政策的文本；
- (三) 应缔约另一方要求，就解释具体的法律和政策进行磋商。

第七条 限制豁免

涉及缔约任何一方国民的投资或投资有关活动的任何关于法院诉讼管辖豁免，起诉的送达程序和执行豁免的任何问题，应依照接受投资缔约方的法律解决。

第八条 征收和国有化

一、缔约一方不对任何投资采取征收、国有化或其他效果相同的措施，除非所采取措施是为了公共利益，是非歧视性的，依照接受投资缔约一方的法律，并给予合理补偿。

二、本条第一款所述补偿应按措施为公众所知前一刻的投资的市场价值为基础计算。若市场价值不易确定，补偿应根据公认的估价原则和公平的原则确定，应把投入的资本、折旧、已汇回的资本、更新价值和其他有关因素考虑在内。补偿应包括从采取措施之日到支付之日按合理利率计算的利息，支付不得无故迟延，应能自由兑换，并应在缔约双方领土间依照接受投资缔约方的法律当时确定的，以采取措施前 6 个月的每日平均汇率计算的汇率自由转移。

第九条 战争或武装冲突

缔约一方国民在缔约另一方领土内的投资因战争或其他武装冲突、暴乱、判乱或其他类似事件遭受损失，如缔约另一方就此损失采取措施，其给予该国民的待遇应不低于其给予任何第三国国民的待遇。

第十条 转移

一、缔约一方，经要求，应依照其法律和政策允许缔约另一方国民在其领土内的与投资或投资活动有关的所有资金和与投资有关而从国外雇用的人员的收入和其他财产自由转移，并不无故迟延。此类资金包括以下几项：

- (一) 初期资本和任何用于维持或扩大投资的追加投资；
- (二) 收益；
- (三) 费用，包括有关知识产权和工业产权的支付；
- (四) 全部或部分出售、抽回或清算投资所得；
- (五) 按贷款协议所作的支付；
- (六) 资本增值。

二、此类资金和个人收入的汇出，应以国际货币基金组织分类的可自由兑换货币，并依照接受投资缔约方的法律确定的汇出之日的汇率进行。

三、缔约各方可通过公平地、非歧视地和诚信地适用其法律，保护债权人的权利，或保证执行司法或行政诉讼的判决。

第十一条 对投资者的承诺

缔约一方在其法律管辖下，应遵守其有管辖权的机构向缔约另一方国民就依照法律和本协议条款进行的投资所作的书面承诺。

第十二条 缔约一方和缔约另一方国民之间投资争议的解决

一、如缔约一方和缔约另一方国民之间发生有关投资和与投资有关活动的争议，争议双方应首先通过协商和谈判寻求解决争议。

二、如争议在争议一方书面通知另一方争议事宜之日起 3 个月内未能解决，任何一方可采用下列方式：

（一）依照接受投资缔约一方的法律，向其有管辖权的司法或行政部门提出诉讼；

（二）双方同意的或第八条下的有关补偿额的争议，可提交依本协定附件一组成的仲裁庭解决。

三、本条第二款所述方式应不损害双方向接受投资缔约一方有管辖权的政财部门就争议问题寻求协助的权利。

四、一旦中华人民共和国和澳大利亚都成为 1965 年《关于解决国家和他国国民之间投资争端公约》的成员国，争议可依照接受投资缔约一方成为《公约》成员时的条件提交《解决投资争端国际中心》解决。

五、在任何有关投资或与投资有关活动的争议的诉讼程序中，缔约一方不能以有关国民已根据保险或担保合同获得或将获得部分或全部所要求的损失的赔偿或其他补偿作为抗辩，提出反请求权、抵销权或其他权利。然而争议的缔约另一方国民不应获得多于由第八条第二款确定的投资争议标的的价值的补偿。补偿应考虑到有义务补偿的缔约一方领土内的所有补偿来源。

第十三条 缔约双方间的争议

一、缔约双方在需要时，应就本协定的执行问题进行磋商。

二、缔约双方应尽力及时通过友好协商和谈判解决双方间就解释或适用本协定所产生的争议。如争议自缔约一方以书面形式要求协商或谈判 60 天内未能以上述方法解决，争议将应缔约任何一方要求提交依本协定附件二规定设立的仲裁庭，或其他任何经双方同意的国际仲裁庭。

第十四条 生效、时效和终止

一、本协定签字即生效。本协定有效期为 10 年，之后将继续无限期有效，除非依照本条第三款终止本协定。

二、本协定将适用 1972 年 12 月 21 日以后进行的投资。

三、在本条第一款所述第一个 10 年结束时或之后的任何时间，缔约任何一方可以提前 1 年以书面形式通知缔约另一方终止本协定。

四、尽管有本条第三款终止条款，本协定对在终止之日以前进行或取得的投资应自终止之日起 10 年内继续适用。

由双方政府授权其各自代表签署本协定，以昭信守。

本协定于 1988 年 7 月 11 日在北京签订。一式两份，用中文和英文写成，两种文本具有同等效力。

附件一

一、第十二条第二款第（二）项所述仲裁应由三人组成并按下述方式指派：争议各方应指派一名仲裁员，争议双方指派的仲裁员应在其最后仲裁员指派后的 30 天内，达成一致推举一名与缔约双方有外交关系的第三国国民为仲裁庭主席。

二、如一方送达提交仲裁诉讼书面通知 60 天后，仍未就仲裁庭主席达成一致，争议任何一方均可请求国际复兴开发银行行长作出指派。

三、如争议一方收到争议另一方的提交仲裁诉讼和指派仲裁员的书面通知后，未能在收到另一方

的通知后 30 天内指派其仲裁员，此仲裁员应在仲裁庭主席指派后由主席指派。

四、如依本附件指派的仲裁员辞职、死亡或因其他原因不能履行仲裁员的职能，继任仲裁员应按和上述原仲裁员同样的指派方式指派。继任仲裁员应具有原任仲裁员的所有权力和义务。

五、仲裁庭应依据争议双方间的任何协议条款并参照 1965 年《关于解决国家与他国国民间的投资争端公约》制定的程序规则，制定其程序。

六、仲裁庭应决定所有有关其权限的问题。

七、在仲裁庭作出决定前，仲裁庭可在诉讼程序任何阶段，建议争议双方友好解决争议。仲裁庭应考虑本协定条款、争议双方间的任何协定和接受投资缔约方的有关国内法，以多数票作出裁决。

八、裁决应是终局的，并具有约束力，并依照缔约一方法律在其领土内执行。

九、争议各方应负担其指派的仲裁员的费用。主席的费用和其他与仲裁活动有关的费用应由双方平均承担。

附件二

一、第十三条所述仲裁庭应由 3 人组成，并按下述方式指派：缔约各方应指派一名仲裁员，缔约双方达成一致指派第三名仲裁员，该仲裁员应为一与缔约双方都保持外交关系的国家的国民。该第三名仲裁员将作为仲裁庭主席。

二、仲裁诉讼应在提出诉讼缔约一方通过外交途径送达缔约另一方通知后成立。该通知应概括写明提出要求的根据、所要求的救济性质和提出诉讼缔约一方指派的仲裁员的姓名。在该通知送达 60 天内，缔约另一方应通知提出诉讼的缔约一方其指派的仲裁员的姓名。# 13 三、如在送达仲裁诉讼成立通知 60 天内，缔约双方未能就仲裁庭主席达成一致，缔约任何一方可以请求国际法院院长作出指派。如果院长是缔约任何一方的国民，或因其他原因而不能履行，则请求国际法院副院长作出指派。如果副院长是缔约任何一方的国民或因其他原因而不能履行，则应请求非缔约任何一方国民的国际法院资深法官作出指派。

四、假如依本附件指派的仲裁员辞职、死亡或因其他原因不能行事，继任仲裁员应按上述原仲裁员同样的指派方式指派，继任仲裁员应具有原任仲裁员所有的权力和义务。

五、仲裁庭应在仲裁庭主席确定的时间和地点集合，此后仲裁庭应决定开庭地点和时间。

六、仲裁庭应决定所有有关其权限的问题，并应依照缔约双方间的任何协议规定其程序。

七、在仲裁庭作出决定前，仲裁庭可在诉讼程序的任何阶段建议缔约双方友好解决争议。仲裁庭应考虑本协定的条款，缔约双方已签订的国际协定，以及普遍承认的国际法原则，以多数票作出裁决。

八、缔约各方应各自负担其所任命的仲裁员的费用。主席的费用和其他与仲裁活动有关的费用应由缔约双方平均承担。

九、仲裁庭应公正地听取缔约双方的意见。仲裁庭可以对缔约一方作出不应诉裁决。裁决应以书面形式作出，并应说明其法律依据。经签字的裁决文本应送达缔约各方。

十、裁决应是终局的，并对缔约双方均具有约束力。

AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S

REPUBLIC OF CHINA AND THE GOVERNMENT OF AUSTRALIA ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

(The Government of the People's Republic of China and the Government of Australia (hereinafter referred to as the Contracting Parties)

Whole Doc.

RECOGNIZING the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and technical co-operation between them, particularly with respect to investment by nationals of one Contracting Party in the territory of the other Contracting Party;

CONSIDERING that investment relations should be promoted and economic cooperation strengthened in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence;

ACKNOWLEDGING that investments of nationals of one Contracting Party in the territory of the other Contracting Party would be made within the framework of laws of that other Contracting Party; and

RECOGNIZING that pursuit of these objectives would be facilitated by a clear statement of principles relating to the protection of investments and associated activities, combined with rules designed to render more effective the application for these principles within the territories of the Contracting Parties,

HAVE AGREED as follows:

ARTICLE I DEFINITIONS

1. For the purposes of this Agreement:

(a) "Company" means any corporation, association, partnership, trust or other legally recognized entity that is duly incorporated, constituted, set up, or otherwise duly organized:

(i) under the law of a Contracting Party; or

(ii) under the law of a third country and is owned or controlled by an entity described in paragraph (1) (a) (i) of this Article or by a natural person who is a citizen or permanent resident of a Contracting Party under its law; regardless of whether or not the entity is organized for pecuniary gain, privately or otherwise owned, or organized with limited or unlimited liability.

(b) "Investment" means every kind of asset, owned controlled or contributed by nationals or one Contracting Party and admitted by the other contracting party subject to its law and investment policies applicable from time to time and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

- (ii) a company or shares of stock or other interests in a company or interests in the assets thereof;
 - (iii) a claim to money or a claim to performance having economic value;
 - (iv) intellectual and industrial property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill;
 - (v) any rights conferred by law or under a contract permitted by law, including rights to engage in agriculture, forestry, fisheries and animal husbandry, rights to search for, extract or exploit natural resources and rights to manufacture, use and sell products; and
 - (vi) returns which are reinvested. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.
- (c) "Law" includes regulations.
- (d) "National" of a Contracting Party means a natural person who is a citizen or a permanent resident of a Contracting Party under its law or a company.
- (e) "Return" means an amount derived from or associated with an investment, including profits, dividends, interest, capital gains, royalty payments, management or technical assistance fees, payments in kind and all other lawful income.

(f) "Activities associated with investments", subject to the law of the Contracting Party which has admitted the investment, includes the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including industrial and intellectual property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase and sale of foreign exchange.

(g) "Territory" in relation to a Contracting Party includes the territorial sea, maritime zone or continental shelf where that Contracting Party exercises its sovereignty, sovereign rights or jurisdiction.

2. This Agreement shall not apply to a company organized under the law of a third country within the meaning of paragraph (1) (a) (ii) of this Article where the provisions of an investment protection agreement with that country have already been invoked in respect of the same matter.

3. This Agreement shall not apply to a person who is a permanent resident but not a citizen of a Contracting Party where:

- (a) the provisions of an investment protection agreement between the other Contracting Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or
- (b) the person is a citizen of the other Contracting Party.

ARTICLE II ENCOURAGEMENT AND ADMISSION OF INVESTMENTS

1. Each Contracting Party shall encourage and promote investments in its territory by nationals of the other Contracting Party and shall, in accordance with its law and investment policies applicable from time to time, admit investments.

2. Each Contracting Party reserves the right to refuse to admit the investments of any company of the other Contracting Party if nationals of any third country control such company, or if it has no

substantial business activities in the territory of that other Contracting Party.

3. This Agreement shall not affect the right of a Contracting Party to allow or prohibit the making of investments within its territory by nationals of a third country.

4. This Agreement shall not prevent a national of one Contracting Party from taking advantage of the provisions of any law or policy of the other Contracting Party which are more favourable than the provisions of this Agreement.

5. A company duly organized under the law of a Contracting Party shall not be treated as a national of the other Contracting Party, but any investments in that company by nationals of that other Contracting Party shall be protected by this Agreement.

ARTICLE III TREATMENT OF INVESTMENTS

A Contracting Party shall at all times:

(a) ensure fair and equitable treatment in its own territory to investments and activities associated with such investments;

(b) accord within its territory protection and security to investments and activities associated with investments and, without prejudice to its law, shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments; and

(c) treat investments and activities associated with investments in its own territory, including compensation under Article VIII and transfers under Article x, on a basis no less favourable than that accorded to investments and activities associated with investments of nationals of any third Country, Provided that a contracting party shall not be obliged to extend to investments and activities associated with investments any treatment, preference or privilege resulting from:

(i) any customs union, economic union, free trade area or regional economic integration agreement to which the Contracting Party belongs; or

(ii) the provisions of a double taxation agreement with a third country.

ARTICLE IV ENTRY AND SOJOURN OF PERSONNEL

1. A Contracting Party shall, subject to its law and policies applicable from time to time relating to the entry and sojourn of non-citizens, permit mutual persons who are nationals of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities associated with investments.

2. Subject to paragraph 1 of this Article, nationals of one Contracting Party, who have made investments in the territory of the other Contracting Party, shall be permitted by that other Contracting Party to engage within its territory key technical and managerial personnel of their choice regardless of citizenship.

ARTICLE V SETTLEMENT OF DISPUTES BETWEEN NATIONALS OF THE CONTRACTING

PARTIES

A Contracting Party shall in accordance with its law:

(a) provide nationals of the other Contracting Party who have made investments within its territory and personnel employed by them for activities associated with investments full access to its competent judicial or administrative bodies in order to afford means of asserting claims and enforcing rights in respect of disputes with its own nationals;

(b) permit its nationals to select means of their choice to settle disputes relating to investments and activities associated with investments with the nationals of the other Contracting Party, including arbitration conducted in a third country; and

(c) provide for the recognition and enforcement of any resulting judgments or awards.

ARTICLE VI TRANSPARENCY OF LAWS

Each Contracting Party shall, with a view to promoting the understanding of its laws and policies that pertain to or affect investments in its territory of nationals of the other Contracting Party:

(a) make such laws and policies public and readily accessible;

(b) if requested, provide copies of specified laws and policies to the other Contracting Party; and

(c) if requested, consult with the other Contracting Party with a view to explaining specified laws and policies.

ARTICLE VII LIMITATIONS ON IMMUNITY

Any question arising in relation to an investment or activity associated with an investment of a national of either Contracting Party concerning immunity from the jurisdiction of the Courts in any proceeding, the procedure for service of initiating process or immunity from execution shall be resolved in accordance with the law of the Contracting Party which has admitted the investment.

ARTICLE VIII EXPROPRIATION AND NATIONALIZATION

1. A Contracting Party shall not take measures of expropriation or nationalization or other measures having a similar effect relating to any investment unless the measures are in the public interest, non discriminatory, in accordance with the law of the Contracting Party which has admitted the investment and against reasonable compensation.

2. The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the market value of the investment immediately before the measures became public knowledge. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. The

compensation shall include interest at a reasonable rate from the date the measures were taken to the date of payment, shall be paid without undue delay, shall be freely convertible and shall be freely transferable between the territories of the Contracting Parties at the average of the daily exchange rates, determined on each of those days in accordance with the law of the Contracting Party which has admitted the investment, over the six months immediately prior to the taking of the measures.

ARTICLE IX WAR OR ARMED CONFLICT

Nationals of a Contracting Party, whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, insurrection, revolt, or other similar events, shall be accorded treatment by the other Contracting Party no less favourable than that accorded to nationals of any third country, should it adopt any measures relating to such losses.

ARTICLE X TRANSFERS

1. A Contracting Party shall, when requested, permit, subject to its law and policies, all funds of a national of the other Contracting Party related to an investment or activities associated with an investment in its territory, and earnings and other assets of personnel engaged from abroad in connection with an investment, to be transferred freely and without undue delay. Such funds include the following:

- (a) the initial capital plus any additional contributions used to maintain or expand the investment;
- (b) returns;
- (c) fees, including payments in connection with intellectual and industrial property rights;
- (d) receipts from the whole or partial sale, divestment or liquidation of the investment;
- (e) payments made pursuant to a loan agreement; and
- (f) capital accretions.

2. The transfers abroad of such funds and the earnings of personnel shall be permitted in freely convertible currencies as classified by the International Monetary Fund and shall be made at the exchange rate determined in accordance with the law of the Contracting Party which has admitted the investment on the date of transfer.

3. Either Contracting Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicative proceedings, through the equitable, non-discriminatory and good faith application of its law.

ARTICLE XI UNDERTAKINGS GIVEN TO INVESTORS

A Contracting Party shall, subject to its law, adhere to any written undertakings given by a competent authority to a national of the other Contracting Party with regard to an investment in accordance with its law and the provisions of this Agreement.

ARTICLE XII SETTLEMENT OF DISPUTES BETWEEN ONE CONTRACTING PARTY AND NATIONAL OF THE OTHER CONTRACTING PARTY RELATING TO INVESTMENTS

1. In the event of a dispute between a Contracting Party and a national of the other Contracting Party relating to an investment or an activity associated with an investment, the parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations.

2. If the dispute has not been settled within three months from the date either party gave notice in writing to the other concerning the dispute, either party may take the following action:

(a) in accordance with the law of the Contracting Party which has admitted the investment, initiate proceedings before its competent judicial or administrative bodies; and

(b) where the parties agree or where the dispute relates to the amount of compensation payable under Article VIII, submit the dispute to an Arbitral Tribunal constituted in accordance with Annex A of this Agreement.

3. The action referred to in paragraph 2 of this Article shall be without prejudice to the right of the parties to seek assistance with regard to the dispute from any competent government agency of the Contracting Party which has admitted the investment.

4. In the event that both the People's Republic of China and Australia become party to the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, a dispute may be submitted to the International Centre for the Settlement of Investment Disputes for resolution in accordance with the terms on which the Contracting Party which has admitted the investment is a party to the Convention.

5. In any proceeding involving a dispute relating to an investment or an activity associated with an investment, a Contracting Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the national concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss. Nevertheless, a national of a Contracting Party involved in such a dispute shall not be entitled to compensation for more than the value, as determined in accordance with paragraph 2 of Article VIII, of the investment which is the subject of the dispute, taking into account all sources of compensation within the territory of the Contracting Party liable to pay compensation.

ARTICLE XIII SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

1. The Contracting Parties shall consult when necessary on matters concerning the operation of this Agreement.

2. The Contracting Parties shall endeavour to resolve any dispute between them on the interpretation or application of this Agreement by prompt and friendly negotiations and consultations. If a dispute is not resolved by such means within sixty days of one Contracting Party seeking in writing such negotiations or consultations, it shall be submitted at the request of either Contracting Party to an Arbitral Tribunal

established in accordance with the provisions of Annex B of this Agreement, or, by agreement, to any other international tribunal.

ARTICLE XIV ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on signature. It shall remain in force for a period of ten years and thereafter shall remain in force indefinitely, unless terminated in accordance with paragraph 3 of this Article.

2. This Agreement shall apply to investments made after 21 December 1972.

3. At the end of the first period of ten years referred to in paragraph 1 of this Article and thereafter at any time either Contracting Party may terminate this Agreement by giving one year's written notice to the other Contracting Parties.

4. Notwithstanding its termination in accordance with paragraph 3 of this Article, this Agreement shall continue to apply, for a further period of ten years from the date of its termination, to investments made or acquired prior to the date of its termination.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Beijing on the Eleventh day of July, 1988 in the Chinese and English languages, both texts being equally authentic.

(Zheng Tuobin)

(Bill Hayden)

FOR THE GOVERNMENT OF THE
AUSTRALIA

PEOPLE'S REPUBLIC OF CHINA
FOR THE GOVERNMENT OF

ANNEX A

1. The Arbitral Tribunal referred to in paragraph 2 (b) of Article XII shall consist of 3 persons appointed as follows: each party to the dispute shall appoint one arbitrator; the arbitrators appointed by the parties to the dispute shall, within 30 days of the appointment of the last of their number, by agreement, select an arbitrator as Chairman who is a national of a third country which has diplomatic relations with both Contracting Parties.

2. If, within 60 days after a party has given notice in writing instituting the arbitration proceedings, agreement has not been reached on a Chairman of the Arbitral Tribunal, either party to the dispute may request the President of the International Bank for Reconstruction and Development to make the appointment.

3. If a party to the dispute, receiving notice in writing from the other party of the institution of arbitration proceeding and the appointment of an arbitrator, shall fail to appoint its arbitrator within 30 days of receiving notice from the other party, such arbitrator shall be appointed by the Chairman of the Arbitral Tribunal after the Chairman is appointed.

4. In case any arbitrator appointed as provided in this Annex shall resign, die or otherwise become

unable to perform his functions as an arbitrator, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and his successor shall have all the powers and duties of the original arbitrator.

5. The Arbitral Tribunal shall, subject to the provisions of any agreement between the parties to the dispute, determine its procedure by reference to the rules of procedure contained in the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

6. The Arbitral Tribunal shall decide all questions relating to its competence.

7. Before the Arbitral Tribunal makes a decision it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, any agreement between the parties to the dispute and the relevant domestic law of the Contracting Party which has admitted the investment.

8. An award shall be final and binding and shall be enforced in the territory of each Contracting Party in accordance with its law.

9. Each party to the dispute shall bear the costs of its appointed arbitrator. The cost of the Chairman and other expenses associated with the conduct of the arbitration shall be borne equally by the parties.

ANNEX B

1. The Arbitral Tribunal referred to in Article XIII shall consist of three persons appointed as follows: each Contracting Party shall appoint one arbitrator, and a third arbitrator, who shall be a national of a country with which both Contracting Parties maintain diplomatic relations, shall be appointed by the agreement of the Contracting Parties. This third arbitrator shall also act as "Chairman of the Tribunal".

2. Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the Contracting Party instituting such proceedings to the other Contracting Party. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the Contracting Party instituting such proceedings. Within 60 days after the giving of such notice the respondent Contracting Party shall notify the Contracting Party instituting proceedings of the name of the arbitrator appointed by the respondent Contracting Party.

3. If, within 60 days after the giving of notice instituting the arbitration proceedings the Contracting Parties shall not be agreed upon a Chairman of the Tribunal, either Contracting Party may request the President of the International Court of Justice to make the appointment. If the President is a national of either Contracting Party or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a national of either Contracting Party or is unable to act, 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 appointment.

4. In case any arbitrator appointed as provided in this Annex shall resign, die or otherwise become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and his successor shall have all the powers and duties of the

original arbitrator.

5. The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

6. The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between the Contracting Parties, determine its own procedure.

7. Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, the international agreements both Contracting Parties have concluded and the generally recognized principles of international law.

8. Each Contracting Party shall bear the costs of its appointed arbitrator. The cost of the Chairman and other expenses associated with the conduct of the arbitration shall be borne in equal parts by both Contracting Parties.

9. The Arbitral Tribunal shall afford to the Contracting Parties a fair hearing. It may render an award on the default of a Contracting Party. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to each Contracting Party.

10. An award shall be final and binding on the Contracting Parties