

中华人民共和国政府和马达加斯加共和国政府相互促进和保护投资协定

中华人民共和国政府和马达加斯加共和国政府相互促进和保护投资协定

Agreement Between the Government of the People's Republic of China and the Government of the Republic of Madagascar for the Reciprocal Promotion and Protection of Investments

中华人民共和国政府和马达加斯加共和国政府（以下称“缔约方”），

The Government of the and the Government of the Republic of Madagascar (hereinafter referred to as “Contracting Parties”)

为加强经济关系，尤其是中国在马达加斯加的投资和马达加斯加在中国的投资，

Desiring to intensify the economic relation, especially the investment made by the People's Republic of China in the Republic of Madagascar , and the investment made by the Republic of Madagascar in the People's Republic of China;

认识到签订鼓励和保护此类投资的协定，将促进两国投资者的经营积极性以及资金和技术的往来，

Recognizing that singing agreement of promotion and protection of such investments will be conducive to transfers of operational capital and technology in both States,

达成一致如下：

Have agreed as follows:

第一条

定义

Article 1 DEFINITIONS

本协定内：

一、“投资”一词系指缔约一方投资者在缔约另一方领土内依照其法律和法规所投入的各类资产，主要是，但不限于：

（一）动产、不动产以及所有与各类资产有关的物权；

（二）股票、债券、资本和其他参股形式，以及对在缔约一方领土内设立公司的少量或间接参股；

（三）债权、与其他资产相关的权利或具有经济价值的行为请求权；

（四）知识产权、商业产权和工业产权；

（五）法律或依法订立的合同授予的权利，包括勘探、探测、提炼或开发自然资源的特许权。

For the purpose of this Agreement,

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

- (a) movable and immovable property as well as any property rights;
- (b) shares, stock, capital and any other kind of participation in companies, and small participation or indirect participation in companies established in the territory of one Contracting Party ;
- (c) claims to money , right related to properties or to any other performance having an economic value ;
- (d) intellectual property, commercial property and industrial property; and
- (e) concessions conferred by law or contract, including concessions to search for exploit or develop natural resources.

作为投资的财产形式发生任何变化都不影响其作为投资的性质, 除非此变化与投资所在缔约方的立法相悖。

Any alteration of the form in which assets are invested shall not affect their classification as investment, unless that such a change contravenes the laws and regulations of the Contracting Party in the territory of which the investment were made..

二、“投资者”一词, 系指:

(一) 根据中华人民共和国或马达加斯加共和国法律, 分别具有中国或马达加斯加国籍的自然人;

(二) 法律实体, 包括依照中华人民共和国或马达加斯加共和国法律设立或组建且注册地在中华人民共和国或马达加斯加共和国境内的公司、合伙及其它组织;

2. The term "investor" means:

(a) natural persons, possessing the nationality of the People's Republic of China or the Republic of Madagascar in accordance with respective laws of the People's Republic of China or the Republic of Madagascar;

(b) legal entities, such as companies, partnerships or other organizations constituted under the law of the People's Republic of China or the Republic of Madagascar and having their head office in that Contracting Party;

本款第(一)、(二)项所指缔约一方自然人或法律实体应依照缔约另一方的法律和法规在其领土上进行投资。

Natural persons or legal entities mentioned in this Paragraph 1 and 2 of either Contracting Party shall invest in the one Contracting Party subject to laws and regulations of this Contracting Party.

三、“收益”一词系指一定期限内，由投资产生的各种款项，如利润、特许权使用费或利息等。投资产生的收益及再投资收益，应与投资受到同等保护。

3. The term “returns” means the net profit after taxation yielded by an investment , such as profits, dividends, royalties and any legitimate income in fixed period. Profits rising from investment and re-investment shall be equally protected.

四、“领土”一词系指缔约任何一方的领土（包括领海），以及根据缔约任何一方法律和国际法，在其领海以外拥有勘探、开发海床和底土资源及海底以上水资源的主权权利的任何区域。

4. The term “territory” means territory of either Contracting Party (including territorial sea), as well as any area beyond its territorial sea within which either Contracting Party has sovereign rights of explorations and exploitations of resources of the seabed and its subsoil and superjacent water resources in accordance with laws of either Contracting Party and international law

第二条

促进和接受投资

Article 2

PROMOTION AND ADMISSION OF INVESTMENT

缔约任何一方应努力鼓励和保护缔约另一方投资者在其领土内的投资，以促进合作。

缔约任何一方应依照其法律和法规接受此类投资。

Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory so as to promote cooperation.

Each Contracting Party shall admit such investments in accordance with its laws and regulations.

第三条

公正和公平待遇

Article 3

FAIR AND EQUITABLE TREATMENT

一、缔约任何一方应依据国际法原则，给予缔约另一方投资者在其领土内的投资以公正和公平的待遇，该待遇在法律上和事实上都不应受到阻碍。

1. In accordance with principles of international law, each Contracting Party shall accord to investors of the other Contracting Party treatment with fair and equitable treatment, and the treatment shall not be impeded in laws or in fact.

二、公正和公平待遇在法律或事实上的障碍主要系指，但不限于：各种对生产和经营手段进行限制的不平等待遇，各种对产品在国内外销售进行限制的不平等待遇，以及其他具有类似效果的措施。而出于安全、公共秩序、卫生、道德和环境保护等原因采取的措施不应被视作障碍。

2. Legal or de facto obstacles to the fair and equitable treatment mainly mean, but not limited to: non-equitable treatment of all kinds of restrictions on the means of production and management, non-equitable treatment of all kinds of restrictions on sale of products at home and abroad, as well as other measures with similar effect. But measures for reasons of security, public order, health, ethical and environmental protection and other reasons, these measures shall not be regarded as obstacles

三、缔约一方应依据其国内法律善意审查缔约另一方的自然人投资者为在缔约另一方领土内投资而提出的入境、居留、工作、交通等方面的申请。

3. One Contracting Party shall conduct review as for entry, residence, working and communication application and other applications by natural persons investors of the other Contracting Party for the purpose of making investment in its territory.

第四条

国民待遇和最惠国待遇

Article 4

NATIONAL TREATMENT AND MOST FAVORED NATION TREATMENT

一、依照其法律法规的规定，缔约一方应给予缔约另一方的投资者在其领土内的投资及与投资相关活动不低于其给予本国投资者的待遇，或不低于其给予任何第三国投资者的待遇，如果此待遇更为优惠。

1. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments, and activities associated with such investments by investors of the other Contracting Party treatment not less favorable than that accorded to the investment of its own investors or to investors of any third State, if the treatment is more favorable.

二、但是，本条前款所述的最惠国待遇不包括缔约一方根据其参加或被吸收加入的自由贸易区、关税同盟、共同市场或其它形式的地区经济组织的规定而给予第三国投资者的优惠。

2. The most favored nation treatment mentioned in the Paragraph 1 of this Article shall not include the privileges granted by one Contracting Party to investors of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form regional economic organization.

三、本条给予的待遇不包括缔约一方根据避免双重征税协定或其他税务安排给予第三国投资者的优惠。

3. The treatment accorded by one Contracting Party shall not include the privileges granted by one Contracting Party to investors of the any third State in accordance with agreement on avoiding double taxation or other taxation arrangement.

第五条

征收和赔偿

Article 5

EXPROPRIATION AND COMPENSATION

一、缔约任何一方投资者在缔约另一方领土上的投资，享有充分、全面的保护和安全。

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy the full and comprehensive protection and security.

二、缔约任何一方不应在缔约另一方投资者的投资采取征收、国有化或其他类似措施，以直接或间接征收缔约另一方投资者在其领土上拥有的投资，除非满足下列条件：

- (一) 在良好的法制框架下，基于公共利益而采取的措施；
- (二) 措施为非歧视性的，且不违反采取措施的缔约方的承诺；
- (三) 采取措施时给予适当补偿。

2. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against the investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

- (a) adopting measures for the public interests under good legal framework;
- (b) without discrimination and not contrary to the commitments of the Contracting Parties;
- (c) against fair compensation when adopting measures;

三、本条第二款所述的补偿，应等于采取征收或征收为公众所知的前一刻被征收投资的价值。补偿自征收之日起到付款之日按正常市场利率计算利息。补偿的支付不应不合理地延迟，并应自由转移。

The compensation mentioned in Paragraph 2 of this Article shall be equivalent to value of the expropriated investments immediately before is taken becomes public knowledge. The interests shall be calculated from the date of the expropriation to the date of payment. The compensation shall be made without delay and be freely transferable.

第六条

战争和冲突损失赔偿

Article 6

Compensation for Losses from War and Conflicts

缔约一方投资者在缔约另一方领土内的投资如因战争或武装冲突、革命、国家紧急状态、叛乱、暴动、骚乱、恐怖活动等原因遭受损失的，缔约另一方给予其在恢复原状、损害赔偿、补偿或其它解决方面的待遇，应不低于给予本国投资者或者任何第三国投资者中较优的待遇。

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or terroristic activities 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.

第七条

自由转移

Article 7

Free Transfer

缔约一方的投资者在缔约另一方的领土内进行投资，缔约另一方应允许该投资者自由转移与投资有关的款项。

Investment made by investors of one Contracting Party in the other Contracting Party, the latter Contracting Party shall guarantee to an investor of the former Contracting Party that all payments related to an investment in its territory may be freely transferred.

转移应依照缔约方法律和法规进行，并应符合这些法律和法规所规定的手续和义务要求。转移主要包括，但不限于：

The transfer shall be subject to laws and regulations of the Contracting Parties, and fulfill the procedure and obligation requirements by the laws and regulations provided in these laws and regulations. The transfers shall mainly include, but not be limited to:

- (一) 利息、股息、利润及其他往来收入；
- (二) 本协议第一条第一款第（四）和第（五）项中规定的非实物权利的使用费；
- (三) 合法借款的偿付；
- (四) 投资出售或投资全部或部分清算获得的款项，包括投资资本的增值部分；
- (五) 上述第五、六条所列的征收或损失的补偿；
- (六) 报酬。

(a) profits, dividends, interests and other incomes;

(b) royalties of non-material rights provided in Paragraph 1(d) and (e) of Article 1 of this Agreement;

proceeds of total or partial sale or liquidation of investments;

(c) payments made pursuant to legitimate loan agreement;

(d) sale of investment, proceeds of total or partial sale or liquidation of investments, including the value-added part of the investment;

(e) compensation paid under Article 4 and 5 of this agreement;

(f) earnings.

二、上述转移应以可自由兑换的货币按照转移当日接受投资缔约一方通行的市场汇率进行。

2. The transfers referred to in paragraph 1 of this Article shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable of the Contracting Party accepting the investment on the date of transfer.

三、在没有外汇市场的情况下，使用的汇率应为最近的相关货币与特别提款权之间的汇率。

3. Where there is no prevailing market exchange rate, the applicable exchange rate shall be the rate between the most recent rate between the relating currency and the the specil drawing right.

四、如国际收支出现特别困难，缔约方可以按照国际货币基金组织协定规定的标准和要求对自由转移暂时进行限制，并符合公正、无歧视、诚信的标准。

4. If there are special difficulties for international payment balance, the Contracting Parties may conduct temporary on the free transfers be in accordance with the standards and requirements provided in the International Monetary Fund Agreement, and shall be subject to fair, non-discriminatory, good faith standards.

第八条

代位

Article 8

Subrogation

如果缔约一方或其指定的机构根据其对在缔约另一方领土内的投资所作的担保，向其投资者进行了支付，则缔约一方或其指定机构在与投资者同等的范围内，代位行使该投资者的权利或执行该投资者的请求权，并承担其与投资相关的义务。

If a Contracting Party or its designated Agency makes payments to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its designated Agency and recognize the subrogation of the former Contracting Party or its designated Agency to such right or claim in the same scope, and shall assume obligations related to the investment .

第九条

特别约定

Article 9

Specific Provision

如根据缔约一方国内法律，或根据缔约双方间现有或将来订立的除本协定以外的国际法义务制定的一般或特别法规，可给予缔约另一方投资者的投资比本协定更为优惠的待遇，该法规只要更加优惠，就将优于本协定。

If the provisions of domestic law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

第十条

投资者和缔约一方间争议的解决

Article 10

Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

一、缔约一方和缔约另一方投资者之间的各种投资争议应尽可能通过双方友好协商解决。

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

二、如果在一方书面提出争议之日起六个月内未能消除争议，根据缔约另一方投资者的要求，有关争议应选择提交：

缔约一方领土内的仲裁机构；

缔约一方领土内的司法程序；

“解决投资争端国际中心”的仲裁程序，依据 1965 年 3 月 18 日在华盛顿开放签字的《解决国家和他国国民之间投资争端公约》，进行仲裁解决，但前提是有关投资者在提交国际仲裁前，用尽该缔约方法律和法规所规定的国内行政复议程序。

If the dispute cannot be settled after resort to negotiations as specified in Paragraph (1) of this Article, the dispute may be submitted at the request of the investor concerned to:

arbitral tribunal within the territory of the Contracting Party; or

judicial procedure of within the territory of the Contracting Party; or

to the International Center for Settlement of Investment Disputes (ICSID), under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965; provided that the Contracting Party involved in the dispute may require the investor concerned to complete the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the submission to international arbitration.

三、仲裁裁决具有强制效力，不可再行起诉或使用其它非《解决国家和他国国民之间投资争端公约》规定的解决方式。裁决按照缔约方国内法予以执行。

3. The award shall be binding on both parties, and shall not be submitted to another suit or referred to any other settlement method not provided under the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

四、仲裁过程中或执行仲裁裁决时，与争议有关的缔约一方不能以投资者已通过保险获得部分或者全部补偿为由提出抗辩。

4. During the arbitration process or enforcement of arbitral awards, the Contracting Party related to the dispute shall not hold that the investor has received partial or total insurance compensation as defense.

第十一条

适用

Article 11

Application

本协定生效后,同样适用于在协定生效前由缔约一方投资者在缔约另一方领土内按照其法律法规进行的投资。

但是,在协定生效前已经产生的投资争议不适用本协定。

This Agreement shall apply to investments made by one Contracting Party in the other Contracting Party subject to the laws and regulations of the latter Contracting Party prior to the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen before its entry into force.

第十二条

缔约双方争端的解决

Article 12

Settlement of disputes between the Contracting Parties

一、对本协定的解释或适用所产生的争议,应通过外交途径解决。

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.

二、如果争议在缔约任何一方提出之日起六个月内未能解决,根据缔约任何一方的要求,争议可提交仲裁庭解决。

If a dispute according to paragraph 1 of this Article cannot be settled within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

三、该仲裁庭应逐案设立,其组成方式如下:

(一) 缔约双方各自指定一名仲裁员;

(二) 指定的两名仲裁员共同选定一位第三国国民由缔约双方任命为首席仲裁员;

(三) 所有仲裁员应在缔约一方向缔约另一方表示拟将争议提交仲裁之日起两个月内被任命。

3. Such an arbitral tribunal shall be constituted for each individual case as follows: (a) each Party to the dispute shall appoint an arbitrator;

(b) these two arbitrators shall jointly select a national of a third State as the Chairman;

(c) all arbitrators shall be appointed within two months that one Contracting Party notice the other Contracting Party to submit the dispute for arbitrateion.

四、如果仲裁庭未能在前款第（三）项规定的期限内组成，缔约双方间又无其它约定，缔约任何一方可邀请国际法院院长做出必要的任命。如果国际法院院长是缔约任何一方的国民，或由于其它原因不能履行此项任命，应请国际法院中非缔约方国籍的最资深副院长履行此项任命。

4. If the periods specified in paragraph 3 (c) of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-president of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

五、仲裁庭自行决定其程序，并应依照本协议定以及普遍承认的国际法原则作出裁决。

5. The tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by virtue of the present Agreement and pursuant to the generally recognized principles of international law.

六、仲裁庭的裁决应以多数票作出。裁决是终局的，对缔约双方均有拘束力。应缔约任何一方的请求，仲裁庭应对裁决进行解释。除非在特殊情况下仲裁庭另有安排，否则仲裁程序费用，包括仲裁员的费用，由缔约双方平均分摊。

6. The tribunal shall reach its decision by a majority of votes; the decision shall be final and binding on both Contracting Parties. The tribunal shall, upon the request of either Contracting Party, explain reasons for its award. Unless the arbitral tribunal makes different decisions under special circumstances, the legal fees including the fees of the arbitrators shall be borne in equal parts by the Contracting Parties to the dispute.

第十三条

生效和有效期

Article 13

Entry into Force and Duration

本协议自收到缔约双方完成其各自国内法律程序的后一方书面通知之日后第三十天开始生效。

The Contracting Parties shall notify each other by mutual written notice of the fulfillment of its internal legal procedures required. This Agreement shall come into effect on the first day of the following month after the date on which receiving the latter notice.

This Agreement shall enter into force on the 30th day after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures thereof have been fulfilled.

本协议有效期为十年。如果缔约任何一方未在期满前一年通过外交途径书面通知终止本协议，则本协议在此期限后继续有效。

This Agreement shall remain in force for a period of ten (10) years and thereafter shall be in force for an indefinite period of time, unless either of the Contracting Parties delivers through diplomatic channels to the other Contracting Party a written notice of its decision to terminate this Agreement, with one year in advance.

对本协定终止之日前所做出的投资，本协定第一条至第十二条的规定应自协定终止之日起继续适用十年。

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.

由双方政府正式授权其各自代表签署本协定，以昭信守。

IN WITNESS WHEREOF, the duly authorized representatives of their respective Governments, have signed this Agreement.

本协定于 2005 年 11 月 日在塔那那利佛签订，一式两份，每份均用中文和法文写成，两种文本同等作准。

Done at Tananarive on 2005/11/ in two original versions, in the Chinese and French languages, both texts being equally authentic.

中华人民共和国政府
代表

马达加斯加共和国政府
代表

For the Government of the People's Republic of China

For the Government of the Republic of Madagascar

此文件的英文为参考译文。