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Vorvertrag zwischen der chinesischen Regierung, einer deutschen und einer britischen Bankengruppe über die Finanzierung und den Bau der Tientsin-Zhenjiang-Eisenbahnlinie, 18. Mai 1899

Vertrag

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Regest:

Der am 18. Mai 1899 fertig ausgearbeitet vorliegende Vorvertrag zwischen der chinesischen Regierung einerseits, einer deutschen und einer britischen Bankengruppe andererseits über den Bau der Eisenbahnstrecke Tianjin-Zhenjiang im Norden Chinas, an deren Finanzierung sich neben der Deutsch-Asiatischen Bank (DAB) auch die von der Hongkong and Shanghai Banking Corporation (HSBC) sowie dem Handelshaus Jardine, Matheson & Co. repräsentierte British and Chinese Corporation (Limited) beteiligen will, regelt detailliert die Rechte und Pflichten der Vertragspartner. Vorgesehen ist die gemeinsame Emission einer chinesischen Staatsanleihe im Umfang von 7,4 Millionen Pfund durch die beiden Bankengruppen, aber die im Namen der chinesischen Regierung wahrzunehmende getrennte Verantwortung für eine nördliche und eine südliche Eisenbahnteilstrecke in deutscher bzw. britischer Hand, wobei den Banken auch die Beschaffung der Baumaterialien einschließlich der Schienen und des rollenden Materials obliegen soll. Vorgesehen ist ferner die Konstituierung eines zentralen chinesischen Boards of Directors sowie von zwei chinesisch-deutschen Boards of Commissioners, bei denen die Aufsicht über das jeweilige Baugeschehen und Personal liegen soll.

[1. Seite, 694]

Preliminary Agreement for Tien-tsin-Chinkiang Railway, May, 18, 1899.

This Preliminary Agreement relating to the construction of railways between Tien-tsin and Chinkiang is made between their Excellencies Hsü and Chang, duly authorized to act on behalf of the Imperial Government of China, hereinafter called “the Imperial Directors,” of the one part; and (a) the Deutsch-Asiatische Bank; (b) the Hong Kong and Shanghai Banking Corporation for themselves and on behalf of Messrs. Jardine, Matheson, and Co., as Joint Agents for the British and Chinese Corporation (Limited), hereinafter called „the Syndicate”, of the other part.¹

1. – The Imperial Government of China authorizes the Syndicate to issue an Imperial Government 5 per cent. gold loan for an amount of about 7,400,000l., this amount being subject to modification later after the completion of the survey.

1 Zu den vorausgegangenen und nachfolgenden Gesprächen und Verhandlungen, in die auch Vertreter der deutschen und britischen Regierung einbezogen waren: *Schmidt*, Eisenbahnpolitik, S. 116f.; *Barth*, Hochfinanz, S. 164–169; *Moazzin*, Foreign Banks, S. 150–187.

2. – The loan is designed to provide the capital for the construction of Government railway lines from a point at or near Tien-tsin, through Titchow and Tsinanfu to Thsien near the southern frontier of Shangtung, hereinafter known as the northern part of the Tien-tsin-Chinkiang railway lines, and from Thsien to Kuachao (Chinkiang) on the Yang-tsze Kiang, hereinafter known as the southern part of the Tien-tsin-Chinkiang railway lines, the total length of these lines being about 982 kilom., equal to about 1,800 Chinese li.

3. – The capital so provided will include the funds required for rolling stock and other equipment and for working the lines together with interest on the loan during the period of construction, which is estimated to occupy about five years from the date of the loan, but which will finally be fixed after survey.

4. – The rate of interest for the loan shall be 5 per cent. per annum on the nominal principal and shall be paid during the time to be fixed for the construction out of the proceeds of the loan, and afterwards out of the revenue of the lines named, in half-yearly instalments, according to the amounts and dates of a Schedule which will be attached to the Final Agreement.²

5. – The term of the loan shall be fifty years. Repayment of principal shall commence in the eleventh year from the date of the loan, and shall be made by a yearly sinking fund in shares to be determined in the Final Agreement to the Deutsch-Asiatische Bank, and the Hong Kong and Shanghai Banking Corporation in yearly instalments out of the revenue of the lines according to the amounts and dates of the Schedule to be attached to the Final Agreement.

6. – In the event of the Imperial Government of China wishing to redeem, after the lapse of thirty years from the date of the loan, the outstanding amount of the loan, or any portion of it not yet due, from funds *bonâ fide* belonging to the Chinese Government or subscribed by Chinese merchants, the conditions for such redemption must first be arranged with the Syndicate when the time arrives.

7. – The yearly payments due for amortization and the half-yearly payments due for interest, except as otherwise provided in clause 4, shall be made in accordance with the amounts and dates of a Schedule to be attached to the Final Agreement, in shares to be determined by the Final Agreement, out of the joint net revenues of the railway lines to the Deutsch-Asiatische Bank and the Hong Kong and Shanghai Banking Corporation by the Boards of Commissioners hereinafter mentioned, who shall hand to those banks, at their branches in Shanghai, twenty-one days before the due date named in the Schedule funds in Shanghai Sycee, sufficient to meet such payment in sterling in Europe, the rate of exchange for which shall be settled with those two banks on the same day on a fair basis.

In reimbursement of expenses connected with the service of interest and principal of the loan, the two banks will receive a commission of one-quarter per cent. on the annual loan service.

8. – The Imperial Government of China hereby engages that the interest and principal of this loan shall duly be paid in full, and should the revenues of the railways not be sufficient to provide for the due and full payment of interest and repayment of principal of this loan, the Imperial Directors must memorialize the Throne, and the Imperial Government of China will thereupon make arrangements to insure that the amount of deficiency shall be met from other sources and handed over to the banks twenty-one days before the due date of the funds required to complete full payment of interest and repayment of principal.

This clause to be open to reconsideration in the Final Agreement.

9. – This entire loan shall be secured by a first mortgage on the permanent way rolling stock and entire property together with the revenue of the lines named in clause 2. [2. Seite, 695]

No further loan, charge or mortgage, shall be charged on this security, except with the written consent of the two banks, until the present loan is returned. In the event of default in payment of interest or repayment of principal of this loan on due date the railway lines and property so mortgaged shall be handed over to the Syndicate to be dealt with in such a manner as may be legal and necessary for the full and effective protection of the bondholders. When the loan is completely redeemed, clause 29 of this Agreement shall take effect.

2 Ein endgültiges Abkommen konnte infolge des Boxeraufstands und der dadurch erheblich verzögerten weiteren Verhandlungen erst 1908 abgeschlossen werden; es bezog sich auf die Strecke Tientsin-Pukou und belief sich auf 5,000,000 £. Vgl. Moazzin, *Foreign Banks*, S. 179–183, 279.

10. – The Syndicate will be authorized to issue to the subscribers to the loan, bonds for the total amount of the loan in pounds sterling in such form, in such languages, and for such amounts as shall appear advisable to the Syndicate, and these bonds shall be sealed in China by the Imperial Directors and in Europe by the Minister for China, in Berlin or London as evidence that the Imperial Government of China is bound thereby as debtor of the loan. Provision will be made in the Final Agreement for the case of bonds lost, stolen, or destroyed.

11. – All bonds and coupons and payments made and received in connection with the service of this loan shall be exempt from all Chinese taxes and imposts for ever.

12. – All details necessary for the prospectus and connected with the service of the interest and repayment of the principal of this loan, not explicitly provided for by the Final Agreement, shall be left to the arrangement of the Syndicate who will be authorized to issue a prospectus of the loan as soon as possible after the signing of the Final Agreement.

The Imperial Government of China will instruct the Chinese Ministers in Berlin and London to co-operate with the representatives of the Syndicate in any matters requiring conjoint action, and the Chinese Minister in Berlin will sign the prospectus of the loan as required by the Rules of the Berlin Stock Exchange.

13. – The loan shall be floated in one or more series at the discretion of the Syndicate, due regard being had to the interest of China; but the floating of the loan shall not be delayed more than necessary, subscriptions being invited by the Syndicate in Europe and in China from both European and Chinese on equal conditions.

14. – The price of the loan shall be 90 per cent. net on the nominal principal to the Chinese Government. The proceeds of the loan shall be paid to the credit of a Tien-tsin-Chinkiang Imperial Government railway account with the Deutsch-Asiatische Bank, Berlin, and to the credit of a Tien-tsin-Chinkiang Imperial Government railway account with the Hong Kong and Shanghai Banking Corporation, London. The payment into the credit of these accounts shall be made in such instalments and on such dates as the conditions allowed to the subscribers to the loan shall admit.

Interest at a rate to be arranged from time to time shall be granted on the credit balance of the railway accounts.

After deduction of the funds required for the service of interest and for commission on this service during the time of construction, the Deutsch-Asiatische Bank will hold the proceeds with accrued interest to the order of the Board of Commissioners appointed for the northern part of the Tien-tsin-Chinkiang Railway lines, and the Hong Kong and Shanghai Banking Corporation will hold the proceeds with accrued interest to the order of the Board of Commissioners appointed for the southern part of the Tien-tsin-Chinkiang Railway line. The Commissioners, in drawing the sums necessary for the construction, shall give notice to the banks fourteen days before the day on which they are required.

15. – If during the time of construction the whole amount of the instalments with accrued interest to be paid by the Syndicate should, after deduction of the sums necessary for the service of interest on the loan, not be sufficient for the construction of the railway lines, the amount of deficiency shall be provided by a supplementary loan to be issued by the Syndicate, the interest and other conditions of which are to be the same as in this Agreement, but the price must be arranged when the time arrives.

If after the completion of the lines there should be a balance at credit of the Tien-tsin-Chinkiang Railway account, the Syndicate shall transfer such unused balance to the credit of the loan service reserve fund, hereinafter mentioned as a provision for payments to which the Government is bound by clause 8 of this agreement.

16. – If before the publication of the prospectus for the issue of the loan any political or financial crisis should take place in Europe or elsewhere, by which the markets and the prices of existing Chinese Government stocks are so affected as to render the successful issue of the loan impossible on the terms herein-named, the Syndicate shall be granted such extension of time for the performance of their contract as the circumstances demand, or shall have the right to withdraw from their contract with the Chinese Imperial Government, which shall in that case become null and void.

17. – The Deutsch-Asiatische Bank on the one side, and the Hong Kong and Shanghai Banking Corporation for themselves and on behalf of Messrs. Jardine, Matheson, and Co., as joint agents for the British and Chinese Corporation (Limited), on the other side, shall take the loan in shares to be agreed upon by the Syndicate, and without responsibility for each other.

18. – The northern part of the railway lines shall be constructed, equipped, and[3. Seite, 696] worked on behalf of the Imperial Chinese Government by the Deutsch-Asiatische Bank, and the southern part of the railway lines shall be constructed, equipped, and worked on behalf of the Imperial Chinese Government by the British and Chinese Corporation (Limited), under conditions as follows: – For each of these parts a Board of Commissioners shall be appointed to superintend the construction, equipment and working of the railway lines in accordance with regulations to be arranged between the Imperial Directors and the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited).

19. – An office shall be provided for the Imperial Directorate, and a head office shall be established for each Board of Commissioners. The Board of Commissioners for the northern and southern parts of the lines respectively appointed to superintend the construction and administration shall each consist of five members: two Chinese managers representing the Imperial Directors and nominated by them, and three European members, namely, a representative of the Bank concerned, the Manager and the Chief Engineer, to be nominated by the Deutsch-Asiatische Bank, and the British and Chinese Corporation (Limited).

In case any foreign or Chinese members of the Boards of Commissioners do not work well together, it shall be open to the Imperial Directors, the Deutsch-Asiatische Bank, and the British and Chinese Corporation (Limited), to mutually discuss means to arrange and deal with the matter.

The foreign and Chinese railway staff, including a Ti-tiao, shall be appointed by the Boards of Commissioners, who will report the appointment to the Imperial Directors. In the event of an important appointment the two Chinese members of the Boards may first consult the Imperial Directors.

The principal members of the railway staff shall be capable and experienced Europeans, but Chinese with sufficient experience in engineering or traffic may also be appointed.

Foreign and Chinese members of the railway staff shall, in the event of incapacity or misconduct, be dismissed by the Boards of Commissioners, who will inform the Imperial Directors of the same.

The salaries of the five members of each Board of Commissioners and of the foreign and Chinese railway staff shall be arranged by the Deutsch-Asiatische Bank, the British and Chinese Corporation (Limited), and the Imperial Directors, and paid by the head office of their respective sections.

20. – The plans, estimates and all matters relating to survey must be submitted for approbation to the Board of Commissioners. The Chief Engineer shall indicate to the Chinese Commissioners the land which it is necessary to purchase, and which must be sufficient for the construction of a permanent way with double lines and dependencies, and the Chinese Commissioners shall thereupon effect such purchases at a price to be based on a scale to be arranged after survey. In the event of the route proposed by the Chief Engineer passing through towns, villages, graveyards, or other points, where much obstruction is encountered, the Chief Engineer will, together with the Board of Commissioners, consider means of diverting the proposed railway route in order to avoid difficulties.

21. – After completion of the survey and due inquiry as to the prevailing provincial *li-kin* and customs dues, the Imperial Directors will arrange with the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited), regulations for the payment of *li-kin* and duty upon merchandize and live-stock in transit over the railway lines.

22. – All materials necessary for the construction and working of the lines obtained either from foreign countries or from other provinces of China and the revenues derived from the railway shall be exempt from duty or taxation of all kinds, and the Imperial Government of China will instruct the customs and *li-kin* authorities accordingly.

All material, plant and goods, shall be ordered from the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited), on conditions to be arranged in the Final Agreement.

The plans, estimates and requisitions for materials shall be submitted to the Board of Commissioners by the Chief Engineer for reference at their discretion to the Imperial Directors, and the same shall be furnished by the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited) on the best possible terms.

Due consideration will be extended to materials from the Hanyang Iron Works, if available when required and of a quality satisfactory to the Chief Engineers of the Syndicate.

23. – The Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited), shall during the working of the lines maintain the railways, buildings, works, rolling stock and dependencies in good order and condition.

24. – Branch lines or extensions in connection with the Tien-tsin-Chinkiang Railway lines that may appear profitable or necessary later on shall be the subject of negotiations between the Imperial Directors and the Syndicate.

25. – The tariff to be introduced by the European Manager shall be approved by the Boards of Commissioners who will take into consideration the tariffs of other existing[4. Seite, 697] railway lines in China, while keeping in view the necessity for attracting traffic. The European Manager may also be instructed to enter into arrangements for tariffs on through traffic over connecting lines. In case of war, foreign or internal, the railway lines shall be reserved in the first instance for the transport of Chinese troops, commissariat and munitions of war under the order of Imperial Directors and at half the ordinary tariff rates, and the railways shall not engage in any service injurious to China. In case of famine, grain will also be transported over the lines at half the ordinary tariff rate under orders of the Imperial Directors.

26. – All payments made and received in connection with the railway lines will be subject to the control of the Boards of Commissioners, and after the line is working estimates of receipts and expenditure shall be similarly submitted to the Boards. Regular accounts shall be furnished through the Imperial Directors to the Railway and Mining Bureau of the Tsung-li Yamen and the Board of Revenue, Peking. All payments made must be represented by Chinese or foreign vouchers, as the case may be.

27. – The profits from working completed sections of the railways during the time of construction shall be credited to railway construction account.

28. – Should any traffic business be apparent later on as likely to benefit the Imperial Government of China and increase the earning power of the railway lines, the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited) shall represent the same to the Imperial Directors, and request them to obtain the necessary authority to arrange the business.

29. – The Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited) shall work the lines on behalf of the Imperial Government of China until the present loan is redeemed. As soon as the loan has been completely redeemed, this Agreement shall become null and void, and the railway lines and property named in this Agreement shall be handed over to the absolute disposal of the Chinese Government.

30. – The annual net revenue is understood to be that resulting from the gross receipts of the passengers and goods traffic and the income from other sources, after deducting all working expenses, including maintenance of the permanent way, repairs and renovation of machinery and rolling stock, and all expenses of administration, besides deducting an amount to be determined by the Deutsch-Asiatische Bank and the British and Chinese Corporation (Limited) as sufficient for accumulating a reserve fund for extraordinary improvements or repairs. Of the surplus of the joint net annual revenue of the northern and southern railway lines, after payment of interest and repayment of principal of the loan, first, a participation of 20 per cent. will be granted to the Syndicate in remuneration for their management of the construction and the working of the railway lines; secondly, an amount equal to 10 per cent. of the gross earnings will be transferred to a loan service reserve fund, deposited with the two Banks, and the remainder will be at the disposal of the Imperial Government of China. An account of the said loan service reserve fund will be rendered yearly to the Railway and Mining Bureau of the Tsung-li Yamen and to the Board of Revenue, and the fund will be drawn upon only in the case of the revenue of the railway lines being insufficient to meet the service of interest and principal of the loan. On redemption of the loan being completed, the balance of this fund will revert to the Chinese Government.

31. – The powers and authority given and delegated to the Imperial Directors by the Imperial Government of China shall, in the case of their promotion or removal, be transferred to their successors, and the Deutsch-Asiatische Bank, the Hong Kong and Shanghai Banking Corporation, Messrs. Jardine, Matheson, and Co., and the British and Chinese Corporation (Limited) may, subject to all their obligations, transfer or delegate all or any of their rights, powers, and discretions to any German or English Company, Directors, or agents with or without power of further transfer and sub-delegation.

32. – Differences arising between the Imperial Directors and the Syndicate will be taken up and decided with equity and justice by the Tsung-li Yamen on the one side, and the Minister for Germany and the Minister for Great Britain in China on the other side.

33. – As soon as possible after the signature of this Agreement the Engineers of the Syndicate will be authorized by the Imperial Chinese Government to survey and report upon the proposed railway lines, when, subject to such report being satisfactory to the Syndicate, this Preliminary Agreement will be ratified by the Syndicate and replaced by a Final Agreement containing all necessary details. Modifications in the conditions of this Preliminary Agreement may be made subject to the consent of both parties.

34. – The provisions of this Preliminary Agreement shall, immediately after signature, be ratified by an Imperial Edict, which shall be communicated by the Tsung-li Yamen to the Ministers for Germany and Great Britain in Peking.

35. – Five sets of this Agreement are executed in English and Chinese, one set to be retained by the Tsung-li Yamen, one by the Railway and Mining Bureau, and one by each Contracting Party.

In the event of any doubt arising regarding the interpretation of the Contract, the English text shall rule.