

# **AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF ESTONIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF ESTONIA, hereinafter referred to as the "Contracting Parties"

DESIRING to create favorable conditions for greater economic cooperation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments can strengthen the willingness to undertake such investments and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement

(1) The term "investment" includes all assets, and in particular but not exclusively:

- a) Ownership of movable and immovable property and other rights in rem, such as mortgages, rights of liens, liens, rights of use and similar rights;
- b) Shares and other types of participations in companies;
- c) Claims for money that has been surrendered to create an economic value or claims for a service having an economic value;
- d) Copyrights, industrial property rights such as inventor's patents, trade marks, industrial designs and technical procedures, know-how, trade names and goodwill;
- e) Public-law concessions for the exploration, extraction or extraction of natural resources;

(2) Means the term "investor" in relation to the contracting parties

- a) Any natural person who is a national of one of the Contracting Parties in accordance with its laws and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person or partnership established in accordance with the legislation of one of the Contracting Parties has its seat in its territory and makes an investment in the territory of the other Contracting Party;

(3) The term "income" means the amounts that an investment provides and, in particular, but not exclusively, profits, interest, capital gains, dividends, royalties, royalties and other charges;

(4) The term 'expropriation' also includes nationalization or any other measure having equivalent effect.

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

(1) Each Contracting Party shall, as far as possible, promote the investments of the investors of the other Contracting Parties in its territory, permit such investments in accordance with its legislation and shall treat them in a fair and fair manner.

(2) Investments referred to in Article 1 (1) and their income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal extension, modification or conversion of an investment is made in accordance with the legal provisions of the Contracting Parties. Paragraph 1 and its income enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal extension, modification or conversion of an investment is made in accordance with the law of the contracting parties.

### **Article 3. Treatment of Investment**

(1) Each Contracting Party treats investors of the other Contracting Parties and their investments as well as their own investors and their investments or investors of third States and their investments.

(2) The provisions referred to in paragraph 1 can not be construed as requiring a contracting party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege which may arise under paragraph 1. May be interpreted as requiring a Contracting Party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege which arises

- a) A customs union, a common market, a free trade area or membership of an economic community;
- b) An international agreement, an intergovernmental agreement or domestic legislation on tax issues;
- c) Border traffic.

### **Article 4. Compensation**

(1) Investments by investors of a Contracting Party may be expropriated in the territory of the other Contracting Parties only in the public interest, on the basis of a legal procedure and against compensation. The compensation must correspond to the value of the investment immediately before the date on which the actual or imminent expropriation became public. The compensation shall be paid without undue delay and shall be payable until the date of payment at the usual bank rate of the country in which the investment was carried out; It must be in freely convertible currency and freely transferable. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation.

(2) If a Contracting Party acquires the assets of a company which is to be regarded as a company of that Contracting Party pursuant to Article 1 (2) of this Agreement and in which an investor of the other Contracting Party has share rights it shall apply the provisions of paragraph 1 in such a way that the (2) of this Agreement is to be regarded as a company of that Contracting Party and in which an investor of the other Contracting Party has share rights, it shall apply the provisions of paragraph 1 in such a way as to ensure the appropriate compensation of that investor.

(3) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting party which caused the expropriation.

(4) The investor has the right to have the amount of the compensation and the payment arrangements reviewed by either the competent organs of the contracting party which caused the expropriation or by an international arbitration court pursuant to Article 8 of this Agreement. Article 8 of this Agreement.

### **Article 5. Transfer**

(1) Each Contracting Party guarantees the investors of the other Contracting Parties without undue delay the free transfer in freely convertible currency of the payments connected with an investment, in particular but not exclusively,

- a) Of the capital and additional amounts for maintaining or extending the investment;
- b) Of amounts intended to cover expenditure related to the management of the investment;
- c) Of income;
- d) Repayment of loans;
- e) Of the proceeds in case of complete or partial liquidation or disposal of the investment;
- f) Compensation referred to in Article 4 (1) of this Agreement.

(2) Payments pursuant to this Article shall be made at the exchange rates applicable on the day of the transfer payment in the territory of the Contracting Party from which the transfer is made.

(3) The exchange rates shall be determined in accordance with the quotations on the stock exchanges located in the territory of each Contracting Party or, in a subsidiary manner, by the respective banking system in the territory of each of the Contracting Parties. The bank fees will be fair and reasonable.

## **Article 6. Subrogation**

Where a Contracting Party or an institution empowered by it provides payments to its investor on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the rights of the investor of the first Contracting Party referred to in Article 8 of this Agreement and of the rights of the former Contracting Party pursuant to Article 9 of this Agreement, transfer of all rights or claims of this investor by law or by virtue of a legal transaction to the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims as may be exercised by the former Contracting Party to the same extent as its predecessor. Article 4 and Article 5 of this Agreement shall apply mutatis mutandis to the transfer of payments to the Contracting Party in question on the basis of the rights transferred.

## **Article 7. Other Obligations**

(1) Where, under the law of a Contracting Party or international obligations which exist between the Contracting Parties or which are established in the future, a general or specific rule whereby the investments made by the investors of the other Contracting Parties shall be accorded more favorable treatment than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any contractual obligation which it has assumed in respect of investments made in its territory by an investor of the other Contracting Party.

## **Article 8. Settlement of Investment Disputes**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, the latter shall be consigned as much as possible between the parties.

(2) If a disagreement as defined in paragraph 1 can not be settled within six months from the receipt of a written communication of sufficiently specific claims, the dispute shall be settled at the request of the Contracting Party or the investor of the other Contracting Parties by an arbitration procedure with three arbitrators under the UNCITRAL Arbitration Rules, 15 December 1976 by the General Assembly. If paragraph 1 is not settled within six months from the receipt of a written communication of sufficiently specific claims, the dispute shall be settled at the request of the Contracting Party or the investor of the other Contracting Parties by an arbitration procedure with three arbitrators In accordance with the UNCITRAL Arbitration Rules adopted by the General Assembly on 15 December 1976.

(3) In the event that both Contracting Parties have become Contracting States to the Washington Convention of 18 March 1965 on the settlement of disputes between States and nationals of other States, the dissolution of the dispute may, at the request of the investor, Settlement of investment disputes (ICSID). Each Contracting Party hereby agrees to submit such a disagreement to the ICSID for settlement under the aforementioned Washington Convention. If the disputes differ in their opinion as to whether a settlement procedure or arbitration is the more appropriate way of settling disputes, the investor has the right to make decisions. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without an individual agreement between the Contracting Party and the investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding. Such consent shall include the waiving of the requirement that national administrative or judicial proceedings have been exhausted. The procedures referred to in paragraph 2 shall be submitted to the International Center for the Dispute of Investment Disputes (ICSID). Each Contracting Party hereby agrees to submit such a disagreement to the ICSID for settlement under the aforementioned Washington Convention. If the disputes differ in their opinion as to whether a settlement procedure or arbitration is the more appropriate way of settling disputes, the investor has the right to make decisions. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without an individual agreement between the Contracting Party and the investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding. Such consent shall include waiving the requirement that national administrative or judicial proceedings have been exhausted.

(4) The arbitration award shall be final and binding; It is enforced under national law; Each Contracting Party shall ensure the recognition and enforcement of the arbitration award in accordance with its relevant legislation.

(5) A Contracting Party which is a party to the dispute shall not, at any stage of the settlement or arbitration proceedings or the enforcement of an arbitration award, make any objection to the fact that the investor forming the other Contracting Party has received compensation for all or part of its losses on the basis of a guarantee.

## **Article 9. Settlement of Disputes between the Contracting Parties**

(1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.

(2) If a dispute can not be settled within six months in accordance with paragraph 1, it shall be submitted to an arbitration tribunal at the request of one of the contracting parties. If paragraph 1 is not submitted within six months, it shall be submitted to an arbitration court at the request of one of the contracting parties.

(3) The arbitral tribunal shall be formed from case to case as follows: each Contracting Party shall appoint one member and both members shall agree on a third country national as chairman. The members shall be appointed by the chairman within a further two months within two months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party, or if he is prevented from exercising this function for any other reason, the Vice-President, or in the event of his / her failure, may be called upon to appoint the most active member of the International Court of Justice. In the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party, or if he is prevented from exercising this function for any other reason, the Vice-President, or in the event of his / her failure, may be called upon to appoint the most active member of the International Court of Justice.

(5) The arbitral tribunal shall decide its own rules of procedure.

(6) The arbitral tribunal shall decide on the basis of this Agreement as well as on the basis of generally accepted rules of international law. It decides with multiple votes; The arbitration award shall be final and binding.

(7) Each Contracting Party shall bear the costs of its member and its legal representation in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. The court may, however, in its arbitral award, adopt a different cost regime.

## **Article 10. Application of this Agreement**

This Agreement shall apply to investments made or to be made by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory, both before and after the entry into force of this Agreement; But it does not apply to a dispute which arose before its entry into force, nor to a claim which was brought before its entry into force.

## **Article 11. Entry Into Force and Duration**

(1) This Agreement shall be ratified and shall enter into force on the first day of the month following the date on which the exchange of the instruments of ratification has taken place.

(2) The Agreement will remain in force for twenty years. After the expiration of this period, it will be extended indefinitely and may be terminated in writing by either party upon 12 months' written notice by diplomatic means.

(3) For investments made up to the date of the expiry of this Agreement, Articles 1 to 10 of this Agreement shall continue to apply for a further twenty years from the date of expiry of the Agreement. Articles 1 to 10 of this Agreement for a further twenty years from the date of the date of expiry of this Agreement.

DONE at Tallinn, this 16 May 1994, in two originals, each in the German and Estonian languages, both texts being equally authentic.

For the Republic of Austria:

Dr. Manfred Ortner

For the Republic of Estonia:

Jüri Luik

