

Treaty between the Government of the Kingdom of the Netherlands and the Government of the Republic of Lithuania on the promotion and reciprocal protection of investments

The Government of the Republic of Lithuania

And

The Government of the Kingdom of the Netherlands,

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirable,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

a. The term "investments" shall comprise every kind of asset and more particularly, though not exclusively:

i. Movable and immovable property as well as any other rights in rem in respect of every kind of asset;

ii. Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

iii. Title to money, to other assets or to any performance having an economic value;

iv. Rights in the field of intellectual property, technical processes, goodwill and know-how;

v. Rights granted under public law, including rights to prospect, explore, extract and win natural resources.

b. The term "investor" shall comprise with regard to either Contracting Party:

i. Natural persons having the nationality of that Contracting Party;

ii. Legal persons constituted under the law of that Contracting Party;

iii. Legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in i. or by legal persons as defined in ii. above;

Who invest in the territory of either Contracting Party.

c. Term "territory" shall mean:

i. In respect of the Kingdom of the Netherlands the territory which constitutes the Kingdom of the Netherlands;

ii. In respect of the Republic of Lithuania the territory which constitutes the Republic of Lithuania;

The term "territory" includes also the maritime areas adjacent to the coast of the State concerned, to the extent to which

that State exercises sovereign rights or jurisdiction in those areas according to international law.

Article 2.

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party.

Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3.

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.

2. More particularly, each Contracting Party shall accord to such investments full physical security and protection which in any case shall not be less than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, 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 regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 4.

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own investors or to those of any third State, whichever is more favourable to the investors concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Contracting Party:

- a. Under an agreement for the avoidance of double taxation; or
- b. By virtue of its participation in a customs union, economic union or similar institution; or
- c. On the basis of reciprocity with a third State.

Article 5.

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without undue restriction or delay. Such transfers include in particular though not exclusively:

- a. Profits, interest, dividends and other current income;
- b. Funds necessary
 - i. For the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - ii. To replace capital assets in order to safeguard the continuity of an investment;
- c. Additional funds necessary for the development of an investment;

- d. Funds in repayment of loans;
- e. Royalties or fees;
- f. Earnings of natural persons;
- g. The proceeds of sale or liquidation of the investment.

Article 6.

Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

- a. The measures are taken in the public interest and under due process of law;
- b. The measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;
- c. The measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are investors or in any freely convertible currency accepted by the claimants.

Article 7.

Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 8.

If the investments of an investor of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognized by the other Contracting Party.

Article 9.

Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party to the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.¹ A legal person which is an investor of one Contracting Party and which before such a dispute arises is controlled by investors of the other Contracting Party shall in accordance with Article 25 (2) (b) of the Convention for the purpose of the Convention be treated as an investor of the other Contracting Party.

Article 10.

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after 29 December 1990.

Investments made before this date are covered by this Agreement provided they subsequently are registered according to the laws in force.

Article 11.

Either Contracting Party may propose the other Contracting Party that consultations be held on any matter concerning the

interpretation or application of the Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12.

This Agreement may at any time be amended by written consent between the Contracting Parties. Any amendment shall enter into force when the Contracting Parties have notified each other in writing that the required constitutional procedures in their respective countries have been complied with.

Article 13.

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Contracting Parties have otherwise agreed, be submitted, at the request of either Contracting Party, to an arbitral tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Contracting Party.

2. If one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Contracting Party to make such appointment, the latter Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments. paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Contracting Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the Contracting Parties so agree.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party. The cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

Article 14.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and Aruba, unless the notification provided for in Article 15, paragraph 1 provides otherwise.

Article 15.

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the

right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph 2 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom. paragraph 2 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

DONE in duplicate at The Hague on 26 January 1994, in the Lithuanian, Netherlands and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Government of the Republic of Lithuania: