

# Treaty between the Republic of Estonia and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Republic of Estonia,

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## Article 1.

For the purposes of this Treaty

(1) The term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Shares in companies and other types of participations in companies;
- c) claims to money used to create economic value or claims to benefits that have economic value;
- d) Intellectual property rights, such as, in particular, copyright, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Public-law concessions, including concessions for concessions and concessions;

A change in the form in which assets are invested does not affect their property as an investment;

(2) The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

(3) The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Republic of Estonia:

Estonians within the meaning of the legal provisions of the Republic of Estonia;

(4) The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person or any commercial or other company or association with or without legal personality established in the Federal Republic of Germany, irrespective of whether its activity is directed at profit or not,

b) As regards the Republic of Estonia:

Any legal person, any commercial or other company or association, with or without legal personality, established in the Republic of Estonia, whether or not its activity is directed to profit or not.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

## **Article 3.**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties any less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to third-country nationals or companies because of their membership in a customs or economic union, a common market or a free-trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; it must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in investments in the territory of the other Contracting Party through war or other armed conflicts, shall be treated no less favorably by the Contracting Party in respect of repayments, indemnities, compensation or other consideration than their own Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of income;
- c) To repay loans;

d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

## **Article 6.**

Where a Contracting Party makes payments to its nationals or companies on the basis of an investment in the territory of the other Contracting Party, that other Contracting Party shall, without prejudice to the rights of the first Contracting Party referred to in Article 10, transfer the rights or claims of such nationals or companies by law or by law to the Contracting Party The former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims (transferred claims) which the former Contracting Party is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7.**

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.

(2) This rate must correspond to the cross-rate, which is derived from the exchange rates which the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty Is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has undertaken in its territory in respect of the investments of nationals or companies of the other Contracting Parties.

## **Article 9.**

This contract shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty.

## **Article 10.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration board at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to appoint the chairman within three 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 is a citizen of one of the Contracting Parties or if he is prevented from doing so for another reason, the Vice-President shall take the measures. If the Vice-President also has the nationality of one of the Contracting Parties or if he is also prevented from doing so, the next member of the Court of Justice, who is not a national of one of the Contracting Parties, shall take the measures.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are also Contracting States to the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States, the provisions of Article 27 (1) of the Convention may not be applied to the arbitration referred to above. Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a decision of the arbitration tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 11.**

(1) Disputes concerning investment between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company of the other Contracting Party. Unless otherwise agreed, the provisions of Article 10 (3) to (5) shall be applied mutatis mutandis with the proviso that the members of the arbitral tribunal shall be appointed by the parties in accordance with Article 10 (3), and that, , Each Contracting Party may, in the absence of other agreements, ask the President of the Arbitration Court of the International Chamber of Commerce in Paris to make the necessary appointments. The arbitration shall be enforced under national law.

(3) The Contracting Party involved in the dispute shall not claim as an objection during an arbitration proceedings or the enforcement of an arbitration award that the national or the company of the other Contracting Party has received compensation for part or all of the damage resulting from insurance.

(4) In the event that both Contracting Parties also became Contracting States to the Convention of 18 March 1965 on the resolution of disputes between states and nationals of other States, differences of opinion under this Article shall be subject to an arbitration procedure within the framework of the abovementioned Convention, The controversies shall make a different agreement; Each Contracting Party hereby declares its consent to such proceedings.

## **Article 12.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 13.**

(1) This Treaty shall be subject to ratification.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiration of this period, the term of validity shall be extended indefinitely, unless one of the two contracting parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

Done at Tallinn, this 12th day of November 1992, in duplicate, each in the Estonian and German languages, both texts being equally authentic.

For the Federal Republic of Germany

v. Wistinghausen

For the Republic of Estonia

Trivimi Velliste

## **Protocol**

At the time of signing the Treaty between the Federal Republic of Germany and the Republic of Estonia on the Promotion and Reciprocal Protection of Capital Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which shall be deemed to be integral parts of the Treaty:

### **1. Ad Article 1**

(a) Income from the capital investment and, in the case of its reinvestment, also its proceeds, shall enjoy the same protection as the capital investment.

(b) In particular, without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Contracting Party.

### **2. Ad Article 2**

(a) Investments made in accordance with the laws and regulations of a Party within the scope of its jurisdiction by nationals or companies of the other Party shall enjoy the full protection of the Treaty.

(b) The Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that the international law of the respective Contracting Party permits the exercise of sovereign rights or jurisdiction in such areas.

### **3. Ad Article 3**

(a) For the purposes of paragraph 2 of Article 3, "activity" shall be deemed to include, but not be limited to, the management, use, enjoyment and operation of a capital investment. The following, in particular, shall be regarded as "less favorable" treatment within the meaning of Article 3: the restriction of the supply of raw materials and supplies, energy and fuels, and means of production and operation of all kinds, the obstruction of the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Party to extend to individuals and companies resident in the territory of the other Party tax benefits, exemptions and reductions which, under the tax laws, are granted only to individuals and companies resident in its territory.

(c) The Parties shall, within the framework of their domestic legislation, give favorable consideration to applications for entry and residence of persons of one Party who wish to enter the territory of the other Party in connection with an investment of capital; the same shall apply to workers of one Party who wish to enter and reside in the territory of the other Party in connection with an investment of capital in order to engage in activities as employees. Applications for work permits shall also be given favorable consideration.

Tallinn, November 12, 1992

Your Excellency,

On the occasion of the signing of the Treaty between the Republic of Estonia and the Federal Republic of Germany on the Promotion and Mutual Protection of Capital Investments, I have the honor to inform you of the following:

The Government of the Republic of Estonia, having become aware that the competent authorities of the Federal Republic of Germany may grant measures for the promotion of capital investments of German investors in Estonia even before the entry into force of the Treaty, will provisionally apply the Treaty from the date of signature. This declaration is made in the expectation that the Government of the Federal Republic of Germany will consider granting guarantees for capital investments in Estonia even before the Treaty enters into force.

Please accept, Excellency, the assurance of my highest consideration.

To the Ambassador of the Federal Republic of Germany Tallinn