

# Bilateral Investment Treaty Agreement between Estonia and China

Signed on September 2, 1993

## DEZAN SHIRA & ASSOCIATES

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The Government of the People's Republic of China

and

the Government of the Republic of Estonia,

hereinafter referred to as the "Contracting Parties"

Desiring to encourage, protect and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both States,

Have agreed as follows:

#### ARTICLE 1

For the purpose of this Agreement,

1. The term "investments" 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, including mainly:

- (a) movable and immovable property and other property rights;
- (b) shares in companies or other forms of interests in such companies;
- (c) claims to money or to any performance having an economic value;
- (d) intellectual property rights, industrial property, trade names, know-how and technological processes;
- (e) concessions conferred by law, including concessions to search for and exploit natural resources.

2. The term "investors" means:

in respect of the People's Republic of China:

- (a) natural persons who have nationality of the People's Republic of China;
- (b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China, or in a third State with a predominant interest of a national of the People's Republic of China.

in respect of the Republic of Estonia:

- (a) natural persons who have nationality of the Republic of Estonia;
- (b) any juridical person under the laws of and having its seat in the territory of the Republic of Estonia or in a third State with a predominant interest of a national of the Republic of Estonia.

3. If an investor of a Contracting Party has an interest in a juridical person which was established within the territory of a third State, and this juridical person invests in the territory of the other Contracting Party, it shall be recognized as an investor of the former Contracting Party. This Paragraph shall be applied only when the said third State has no right or abandons its right to protect the said juridical person.

4. The term "return" means the amounts yielded by investments, such as profits, dividends, interests, royalties or other legitimate income.

5. This Agreement shall also apply to investments made by an investor of one Contracting Party in the territorial sea or maritime zone or on the continental shelf where the other Contracting Party exercises its sovereign rights or jurisdiction in accordance with the international law.

## ARTICLE 2

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in and provide facilities for obtaining visas and working permits to nationals of the other Contracting Party to enter and remain or travel in the territory of the former in connection with activities associated with such investments.

## ARTICLE 3

1. Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favourable than that accorded to investments and activities associated with such investments of investors of a third State.

3. The treatment and protection as mentioned in Paragraphs 1 and 2 of this Article shall not include any preferential treatment accorded by a Contracting Party to investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

## ARTICLE 4

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

- (a) in the need of public interests;
- (b) under the process of national law;
- (c) without discrimination;
- (d) against compensation.

2. The compensation mentioned in Paragraph 1. (d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed. The sum of the compensation shall be paid without unreasonable delay in a freely convertible currency to a person entitled thereto and be freely transferable.

3. Investors of 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, state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that accorded to investors of a third State.

#### ARTICLE 5

1. Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party free transfer of their investments and returns held in the territory of the former Contracting Party, including:

- (a) profits, dividends, interests and other legitimate income;
- (b) amounts from total or partial liquidation of investments;
- (c) payments made pursuant to a loan agreement in connection with an investment;
- (d) royalties mentioned in Paragraph 1. (d) of Article 1;
- (e) payments of technical assistance or technical service fee, management fee;
- (f) payments in connection with projects on contract;

2. earnings of nationals of the other Contracting Party who work in its territory in connection with an investment.

3. The abovementioned transfer shall be made in a freely convertible currency at an exchange rate, prevailing on the date of transfer in the territory of the Contracting Party accepting investment.

#### ARTICLE 6

If a Contracting Party or its Agency makes payment to an investor under 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 Agency and shall recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

#### ARTICLE 7

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultations through diplomatic channels.

2. If a dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an *ad hoc* arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two

months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the Contracting Parties cannot reach an agreement on the Chairman within four months from the date of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment.

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

#### ARTICLE 8

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the latter shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to a competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted to an *ad hoc* arbitral tribunal. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article.

4. Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select as a Chairman a national of a third State which has diplomatic relations with the two Contracting Parties. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute and the Chairman shall be selected within next two months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

5. The tribunal shall determine its procedure. However, the tribunal may, in the course of determination of its procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of this decision in accordance with their respective national laws.



7. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law accepted by both Contracting Parties.

8. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

#### ARTICLE 9

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

#### ARTICLE 10

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

#### ARTICLE 11

1. The representatives of the two Contracting Parties shall hold meetings for the purpose of:
  - (a) reviewing the implementation of this Agreement;
  - (b) exchanging information concerning legal aspects of and opportunities for investments;
  - (c) resolving disputes arising out of investments;
  - (d) forwarding proposals on promotion of investments;

(e) studying other issues in connection with investments;

2. Where either Contracting Party requests consultation on any matter of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation will be held alternately in Beijing and Tallinn.

#### ARTICLE 12

1. This Agreement shall enter into force on the first day of the following month after date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force unless either Contracting Party gives a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in Paragraph 1 of this Article.

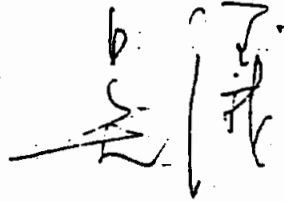
3. After the expiration of the initial ten-year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Beijing..... on September 2, 1993.  
in the Chinese, Estonian and English languages, all three texts being equally authentic. In case of difference of interpretation the English text shall prevail.

For the Government of the  
People's Republic of China



For the Government of the  
Republic of Estonia

