

Bilateral Investment Treaty between Lithuania and China

Signed on November 8, 1993

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AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING THE ENCOURAGEMENT AND RECIPROCAL
PROTECTION OF INVESTMENTS

The Government of the Republic of Lithuania and the Government of the People's Republic of China (hereinafter referred to as "the Contracting Parties"),

Desiring to encourage, protect and create favorable conditions for investment 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 purposes of this Agreement:

1. The term "Investments" shall mean 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 any other property rights such as mortgages, liens and pledges;

(b) shares in companies and any other forms of interest in such companies;

(c) a claim to money or to any performance having an economic value;

(d) intellectual property rights such as patents, trademarks, tradenames, copyrights and industrial design, as well as know-how, goodwill, trade secrets and technological process;

(e) concessions conferred by law or under a contract, having economic value, including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory where the investment is made.

2. The term "investors" means:

In respect of the Republic of Lithuania:

(a) natural persons who are nationals of the Republic of Lithuania;

(b) a legal person or enterprise which is established in accordance with the laws of the Republic of Lithuania and domiciled in the territory of the Republic of Lithuania;

In respect of the People's Republic of China:

(a) natural persons who are nationals 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.

3. The term "return" shall mean the amounts yielded by investments, and in particular though not exclusively, profits, dividends, interests, royalties or other legitimate income.

ARTICLE 2

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

2. Each Contracting Party shall in accordance with its laws and regulations grant assistance in and provide facilities for obtaining visas and working permits to nationals of the other Contracting Party to or 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 favorable 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 the other Contracting Party to investments of investors of a third State based on a customs union, a free trade zone, an economic union, an agreement relating to avoidance of double taxation or an agreement 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 the following conditions are met:

- (a) such expropriation is in the public interest;
- (b) domestic legal procedure is applied;
- (c) such expropriation is carried out without discrimination;
- (d) proper compensation is given.

2. The compensation mentioned in paragraph 1, (d) of this Article shall be equivalent to the value of the expropriated investments immediately before the expropriation took place or before the impending expropriation became public knowledge, shall include interest from the date of expropriation, and shall be convertible and freely transferable. The compensation shall be paid without unreasonable delay. Any dispute which may arise as to the proper valuation of the compensation shall be resolved in accordance with Article 8 of this Agreement.

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, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting Party, treatment no less favorable than that accorded to investors of a third Party.

ARTICLE 5

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

(a) profits, dividends, interest 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 in relation to those assets as mentioned in paragraph 1, (d) of Article 1;

(e) payments of technical assistance or technical service fees, and management fees;

(f) payments in connection with projects based on contract;

(g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

2. The transfer mentioned above shall be made into a convertible currency at the prevailing exchange rate as set by the central bank of the Contracting Party in which the investment has been made on the date of transfer.

ARTICLE 6

If a Contracting Party or its Agency makes payment to one of its investors under a guarantee which has been granted with respect to an investment of such investors 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 recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall be equal to 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 consultation through diplomatic channels.

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

3. Such a tribunal shall be comprised of three arbitrators. Within two months from the date on which either Contracting Party receives from the other Contracting Party a written request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall, together within a further two months period select a third arbitrator who is a national of a third State, such Party having diplomatic relations with both Contracting Parties. The third arbitrator after being approved by the two Contracting Parties shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted according to the periods specified in paragraph 3 of this Article either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. 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(s).

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

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

7. Each Contracting Party shall bear the cost of its appointed arbitrator and all other costs of its representation in the arbitral proceedings. All costs associated with the Chairman of the tribunal and other remaining costs shall be borne in equal parts by the 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 such a decision shall be binding on both 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 other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute can not be settled through negotiations within six months, the investor of the one Contracting Party shall be entitled to submit the dispute as it chooses to either:

a) to a competent court of the Contracting Party in which the investment has been made; or

b) the dispute relating to the amount of compensation and other disputes agreed upon by both parties may be submitted to the International Center for Settlement of Investment Disputes established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965; or

c) In the case where both Contracting Parties have not become Parties to the Convention, the disputes mentioned in paragraph 2 (b) shall be submitted to an ad hoc arbitral tribunal as constituted under paragraphs 3 to 7 of this Article.

3. 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 arbitrators shall select a national of a third State, which has diplomatic relations with the two Contracting Parties, as Chairman. The first two arbitrators shall be appointed within two months of either Contracting Party giving written notice to the other for arbitration and the Chairman shall be selected within four months of such written notice. If according to the periods specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

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

5. 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 the decision in accordance with their respective domestic law.

6. The tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute where the investment has taken place including its rules on the conflict of laws, the

provisions of this Agreement, as well as generally recognized principles of international law accepted by both Contracting Parties.

7. 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties to the dispute, and such a decision shall be binding on both 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 favorable than the treatment provided for in this Agreement, the more favorable 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 from time to time for the purpose of:

- (a) reviewing the implementation of this Agreement;

(b) exchanging legal information and information concerning investment opportunities;

(c) resolving disputes arising out of investments which come within the terms of this Agreement;

(d) forwarding proposals on the promotion of investments between the two Contracting Parties;

(e) studying other issues in connection with investments which come within the terms of this Agreement.

2. Where either Contracting Party requests consultation on any matters concerning paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation shall be held at a place and time agreed upon through diplomatic channels.

ARTICLE 12

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

2. This Agreement shall remain in force if neither Contracting Party gives a written notice to the other Contracting Party to terminate this Agreement one year before the expiration, which is specified in paragraph 1 of this Article.

3. After the expiration of the initial five-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 of such termination.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall remain in force 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 *Peking*..... on *November 8*, 1993 in the Lithuanian, Chinese and English languages, all texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
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THE REPUBLIC
REPUBLIC
OF LITHUANIA

FOR THE
THE PEOPLE'S
OF CHINA