

AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the State of Israel and the Government of the Republic of Belarus, (hereinafter referred to as the "Contracting Parties"),

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favourable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party,

And,

RECOGNISING that the reciprocal promotion and protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both states,

HAVE AGREED as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "investment" shall comprise any kind of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including, but not limited to : a) Movable and immovable property, as well as any other rights, in rem, in respect of every kind of asset,
 - b) Rights derived from shares, bonds and other kinds of interests in legal persons, including companies;
 - c) Claims to money, to other assets and to any performance having an economic value;
 - d) Rights in the field of intellectual property, technical processes, know-how and goodwill;
 - e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting party in whose territory the investment is made, does not affect their character as an investment within the meaning of this Agreement

2. The term "investor" shall comprise :

With respect to investments made in the State of Israel:

- a) Natural persons who are nationals of the Republic of Belarus who are not also nationals or permanent residents of the State of Israel; or
- b) Legal persons including companies, corporations, firms or associations incorporated or constituted in accordance with the law of the Republic of Belarus, which are not directly or indirectly controlled by nationals or permanent residents of the State of Israel.

With respect to investments made in the Republic of Belarus.

- a) Natural persons who are nationals of the State of Israel who are not also nationals of the Republic of Belarus; or

b) Legal persons including companies, corporations, firms or associations incorporated or constituted in accordance with the law of the State of Israel, which are not directly or indirectly controlled by nationals of the Republic of Belarus.

3. The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profits, proceeds received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

4. The term "territory" shall mean with respect to each Contracting Party, the territory of the state of that Contracting Party including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

5. The term "laws and regulations" with respect to each Contracting Party shall mean the laws and regulations of the state of the Contracting Party concerned.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall, in its territory, encourage and create favourable conditions for investments by investors of the other Contracting Party, and, subject to its right to exercise the powers conferred by its laws, shall admit such investments.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. Investor of one Contracting Party may conclude with the other Contracting Party specific agreements, the provisions and effect of which, unless more beneficial to the investor shall not be at variance with this Agreement. Each Contracting Party shall, with regard to investments of investors of the other Contracting Party, observe the provisions of these specific agreements, as well as the provisions of this Agreement.

Article 3. Most Favored Nation and National Treatment

1. Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third state.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third state.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payments shall be freely transferable.

Article 5. Expropriation

Investments of investors of either Contracting Party shall not be nationalized expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter : "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest as provided by the legislation of that Contracting Party until the date of payment, and shall be made without undue delay, be effectively realizable and freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party all the rights and benefits regarding the unrestricted transfer of their investments and returns which were in force on the day the current investment was implemented; provided, however, that the investor has complied with all his fiscal obligations and has fulfilled all the requirements of the exchange regulations. Transfers shall be effected without delay in the convertible currency in which the investment was originally made or in any other convertible currency agreed by the investor and the Contracting Party concerned Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2. In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that no such modifications shall adversely affect the position of an investment which has already been admitted into the territory of that Contracting Party.

Article 7. Exceptions

1. The provisions of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or of any third state shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from :

a) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

b) Any existing or future customs union, free trade area agreement or similar international agreement to which either Contracting Party is or may become a party;

2. The State of Israel reserves the right not to apply the definitions of "investments" and "reinvestment" (Article 1, paragraph 1) and the provisions of Article 6 as set forth in this Agreement to the investments and investors from Poland Hungary and Romania by virtue to agreements concluded with those countries before January 1, 1992, and this will not be considered a violation of Article 3 of this Agreement ("Most Favored Nation Treatment").

Article 8. Disputes between an Investor of a Contracting Party and the other Contracting Party

1. For the purpose of solving disputes with respect to investments, between an investor of a Contracting Party and the other Contracting Party, consultations between the parties to the dispute and other remedies will be pursued with a view to resolving the dispute.

2. If these consultations and remedies do not result in a solution within six (6) months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to :

a) The International Centre for Settlement of Investment Disputes (ICSID), instituted by the Convention on the Settlement of Investment Disputes between States and the Nationals of Other States of Washington DC of March 18, 1965.

b) An arbitrator or international ad hoc tribunal as agreed by the parties to the dispute. The arbitral tribunal shall be established according to the principles contained in Article 9.

3. Neither Contracting Party shall pursue, through the diplomatic channel, any dispute referred to ICSID or to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by ICSID or an international arbitration.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way : Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third state who, on approval by the two Contracting Parties, shall be appointed Chairman of

the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If, within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the Chairman of the Court of Arbitrations of the International Chamber of Commerce in Paris (hereinafter "ICC") to make any necessary appointments. If the Chairman is prevented from discharging the said function, the Vice-Chairman shall be invited to make the necessary appointments. If the Vice-Chairman is prevented from discharging the said function, the Member of the Court of Arbitration of the ICC next in seniority shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and its representatives in the arbitral proceedings, the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

1. If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter: the "Second Contracting Party"), the Second Contracting Party shall recognize :

a) The assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

b) That the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

a) The same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

b) Any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

Article 11. Application of other Rules

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 rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall, to the extent that they are more favorable, prevail over the present Agreement.

Article 12. Application to Investments

The provisions of this Agreement shall also apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by the investors of the other Contracting Party prior to the entry into force of this Agreement.

Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party of the completion of the ratification procedures required for bringing this Agreement into force. This Agreement shall enter into force thirty (30) days from the date of the latter notification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten (10) years. If twelve (12) months before the expiration of the ten (10) year period neither Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement, then this Agreement shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten (10) years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE in duplicate at Jerusalem, this 11th day of April, 2000, which corresponds to the 6th day of Nisan, 5760, in the Hebrew, Belarusian and English languages all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the State of Israel

DAVID LEVY

For the Government of the Republic of Belarus

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