

# **Agreement between the Polish People's Republic and the Republic of Austria on the support and protection of investments**

THE REPUBLIC OF AUSTRIA AND THE POLISH PEOPLE'S REPUBLIC, hereinafter referred to as the "Contracting Parties"

DESIRING to create favorable conditions for greater economic cooperation between the Contracting Parties;

RECOGNIZING that the promotion and protection of mutual investment can strengthen the willingness to undertake such investment and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement

(1) The term "investment" includes all assets, including but not limited to:

- a) Ownership of movable and immovable property and other rights in rem, such as mortgages, rights of retention, liens, rights of use and similar rights;
- b) Shareholdings and other types of participations in companies;
- c) Claims for money that has been surrendered to create an economic value or claims for benefits having an economic value; and
- d) Copyrights, industrial property rights, such as inventor's patents, trademarks, industrial designs and utility models, technical procedures, know-how, trade names and goodwill;

(2) The term "investor"

- a) Any natural person having the nationality of one of the Contracting Parties and making an investment in the territory of the other Contracting Party;
- b) Any legal person, organization or association, with or without legal personality established lawfully in accordance with the laws of one of the Contracting Parties, has its seat in the territory of that Contracting Party and which makes an investment in the territory of the other Contracting Party;

(3) The term "income" means the amounts that an investment provides, in particular but not exclusively, profits, interest, capital gains, dividends, royalties, royalties and other charges;

(4) The term 'expropriation' also includes nationalization or any other measure having equivalent effect.

## **Article 2. Promotion and Protection of Investment**

(1) Each Contracting Party shall, as far as possible, promote investments in the territory of the other Contracting Parties in its territory, permit them in accordance with its legislation and shall treat them in a fair and fair manner.

(2) Investments pursuant to paragraph 1 and their income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of their reinvestment also to their income. The legal extension, modification or conversion of an investment shall be made in accordance with the legislation on foreign investments of those Contracting Parties on whose territory the extension, modification or conversion is made. The first paragraph and its income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of their reinvestment also to their income. The legal extension, modification or conversion of an investment shall be made in accordance with the legislation on foreign investments of those Contracting

Parties on whose territory the extension, modification or conversion is made.

### **Article 3. Treatment of Investment**

(1) Each Contracting Party shall treat investments made by investors of the other Contracting Parties established in its territory on the basis of compliance with all the laws and regulations applicable to its establishment and use, not less favorable than investing its own investors or investors of third States.

(2) Each Contracting Party shall, in its territory, treat the investors of the other Contracting Parties with regard to an investment, in particular with regard to their management, use, use and use, no less favorable than the activities of their own investors or third country investors.

(3) The provisions of this Agreement that the treatment of investors of the other Contracting Party may not be less favorable than that accorded to investors of a third State can not be construed as imposing a Contracting Party to the investors of the other Contracting Parties to the present or future Advantage of a treatment, a preference or a privilege which results from

a) A customs union, a common market, a free trade area or membership of an economic community such as the CMEA;

b) An international agreement, an agreement or national legislation on tax issues,

c) Arrangements to facilitate border traffic.

### **Article 4. Compensation**

(1) Investments by investors of a Contracting Party may be expropriated in the territory of the other Contracting Parties only in the public interest, on the basis of a legal procedure and against compensation. The compensation must correspond to the value of the investment immediately before the date on which the actual or imminent expropriation became public. The compensation shall be paid without undue delay and shall be payable until the date of payment at the usual bank rate of the country in which the investment was carried out; It must in fact be usable and freely transferable. At the latest at the time of the expropriation, appropriate provisions must be made for the fixing and the provision of compensation.

(2) Where a Contracting Party acquires the assets of a company which is to be regarded as its own company pursuant to Article 1 (2) of this Agreement and in which an investor of the other Contracting Parties holds shares, it shall apply the provisions of paragraph 1 of this Article in such a way that: (2) of this Agreement is to be regarded as its own company and in which an investor of the other Contracting Parties holds shares, it shall apply the provisions of paragraph 1 of this Article in such a way as to ensure the appropriate compensation of that investor becomes.

(3) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting party which caused the expropriation.

(4) The investor has the right to have the amount of the compensation reviewed by either the competent organs of the contracting party which caused the expropriation or by an international arbitration court pursuant to Article 8. Article 8.

(5) Concerning the matters governed by paragraph 1, paragraph 2, paragraph 3 and paragraph 4 of this Article, investors of a Contracting Party shall be treated no less favorably in the territory of the other Contracting Party than their own investors or investors of third States. Chapter 1, paragraph 2, paragraph 3 and paragraph 4 Of this Article, investors of a Contracting Party shall be treated no less favorably in the territory of the other Contracting Parties than their own investors or investors of third States.

(6) Investors of a Contracting Party and Joint Undertakings with the participation of investors of a Contracting Party which suffer losses in their investments in the territory of the other Contracting Parties through their war, other armed conflicts, exceptional circumstances or other comparable events shall be discharged by this other Contracting Party with regard to all measures taken in In this context, is treated no less favorably than investors or investors of third countries.

### **Article 5. Transfers**

(1) Each Contracting Party guarantees the investors of the other Contracting Parties without undue delay the free transfer in freely convertible currency of the payments connected with an investment, in particular but not exclusively,

a) Of the capital and additional amounts for maintaining or extending the investment;

b) Of amounts intended to cover expenditure related to the management of the investment;

- c) Of income;
- d) Repayment of loans;
- e) Of the proceeds in case of complete or partial liquidation or disposal of the investment;
- f) Of compensation pursuant to Article 4 (1).

(2) Payments pursuant to paragraph 1 lit. (A) to (d) of this Article, provided that the freely convertible currency has its origin in the investment or in the income from the investment. lit. (A) to (d) of this Article, provided that the freely convertible currency has its origin in the investment or in the income from the investment.

(3) The treatment referred to in paragraphs 1 and 2 of this Article shall not be less favorable than that accorded to investors of third countries. Paragraphs 1 and 2 of this Article shall not be less favorable than those granted to investors of third countries.

(4) The transfers referred to in this Article shall be made at the exchange rates applicable on the day of the transfer.

(5) The bank fees will be fair and reasonable.

## **Article 6. Subrogation**

Where a Contracting Party or an institution empowered by it provides payments to its investor on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the transfer of all rights or claims of the investor, without prejudice to the rights of the former Contracting Party By virtue of a law or a legal transaction, to the former Contracting Party. The other Contracting Party, however, subject to any legal title to a demand which the aforesaid Contracting Party may assert in respect of unpaid tax or duty on the part of the investor, shall recognize the entry of the former Contracting Party into all such rights or claims as the former Contracting Party Their legal predecessor. Article 4 and Article 5 shall apply mutatis mutandis to the transfer of payments to the Contracting Party concerned on the basis of the transferred claims.

## **Article 7. Other Obligations**

(1) Where, under the law of a Contracting Party or international obligations which exist between the Contracting Parties or which are established in the future, a general or specific rule whereby the investments made by the investors of the other Contracting Parties shall be accorded more favorable treatment than under this Agreement The provisions of this Agreement shall apply to the present Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any contractual obligation which it has assumed in respect of investments authorized by it in its territory with investors of the other Contracting Parties.

## **Article 8. Settlement of Investment Disputes**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, the latter shall be consigned as much as possible between the parties. If such differences of opinion can not be made amicably, then the investor has to make use of all domestic administrative and judicial remedies.

(2) If such a disagreement can not be settled within a period of 12 months from a written communication of sufficiently definite claims in a manner provided for in paragraph 1, the dissension shall be submitted at the request of the Contracting Party or the investor of the other Contracting Party to conduct a conciliation or arbitration procedure The difference of opinion shall be submitted at the request of the Contracting Party or the investor of the other Contracting Parties to conduct a conciliation or arbitration procedure:

a) Provided that both Contracting Parties are members of the Convention on the Settlement of Investment Disputes between States or Nationals of Other States \*, which was opened for signature on 18 March 1965 in Washington, the International Center for the Settlement of Investment Disputes. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without the existence of an individual arbitration agreement between a Contracting Party and an investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding. March 1965, the International Center for the Settlement of Investment Disputes. In the case of arbitration, each Contracting Party irrevocably agrees in advance, even without the existence of an individual arbitration agreement between a Contracting Party and an investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding;

b) Provided that one of the Contracting Parties is not a member of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, an international arbitration court. This International Arbitral Tribunal shall be formed from case to case as follows: Each side shall appoint a member and these two members shall agree on a third country national as chairman. Within two months after the investor has informed the other Contracting Party that he wishes to submit the dispute to an arbitral tribunal, the members shall appoint the chairman within two further months.

If the deadlines set out in the preceding paragraph are not met, each party may, in the absence of any other agreement, ask the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or if he is prevented from doing so for any other reason, the Vice-President, or, if he is unable to do so, the most active member of the International Court of Justice, To make the appointments.

The arbitral tribunal shall define its procedural rules by applying the procedural rules of the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18 March 1965, The decision must indicate the basis on which it was adopted; It is to be justified on the request of one side or the other.

(3) The decision is final and binding; It is enforced under national law; Each Contracting Party shall ensure the recognition and enforcement of arbitration in accordance with its relevant legislation.

(4) Each side shall bear the costs of its member and its representation in the arbitration proceedings; The costs of the chairman and the other costs are borne equally by both parties.

(5) A Contracting Party which is a party to the dispute does not make any objection at any stage of the dispute settlement or arbitration proceedings that the investor forming the other party to the dispute has been compensated for some or all of its losses on the basis of an insurance policy.

## **Article 9. Disputes between the Contracting Parties**

(1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.

(2) If a disagreement can not be settled within six months, it shall be submitted to an arbitration court 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 agreeing to be the chairman of a third State to be appointed by the Governments of the two Contracting Parties. The members shall be appointed by the chairman within a further two months within two 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, each Contracting Party may, in the absence of any other agreement, ask the Presidents of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President, or, if he is unable, the most senior member of the International Court of Justice, may be invited to make the appointments 3, any Contracting Party may, in the absence of any other agreement, ask the Presidents of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President, or, if he is unable to do so, the most active member of the International Court of Justice, may be invited to make appointments.

(5) The arbitral tribunal shall regulate its procedure itself.

(6) The arbitral tribunal shall decide on the basis of this Agreement and on the basis of generally accepted rules of international law. It decides with multiple votes; The decision is final and binding.

(7) Each Contracting Party shall bear the costs of its member and its representation in the arbitration proceedings; The costs of the chairman and the other costs are borne equally by the two contracting parties. However, the court may adopt a different system of charges in its decision.

## **Article 10. Application of this Agreement**

This Agreement shall apply, after its entry into force, to all existing and future investments made by investors in one Contracting Party in accordance with the laws of the other Contracting Parties within their territories.

## **Article 11. Entry Into Force and Duration**

(1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the date on which the instruments of ratification have been exchanged.

(2) The Agreement shall remain in force for ten years; After which it shall be extended indefinitely, unless one of the two Contracting Parties terminates the agreement in writing with a period of twelve months. After ten years, the agreement may be terminated at any time but remains in force for one year after termination.

(3) For investments made up to the date of the expiry of this Agreement, Articles 1 to 10 shall continue to apply for a further ten years from the date of expiry of the Agreement. Articles 1 to 10 for a further ten years from the date of expiry of the Agreement ,

For the Republic of Austria:

Mock

For the People's Republic of Poland:

Wilczek