

# **Agreement between the Government of the Republic of Poland and the Government of the Portuguese Republic on the promotion and mutual protection of investments**

The Government of the Republic of Poland and the Government of the Portuguese Republic, hereinafter referred to as the "Contracting Parties", lured by the desire to increase cooperation between the two States,

Striving to create favorable conditions for investors to invest in one Contracting Party in the territory of the other Contracting Party,

Recognizing that mutual investment protection will contribute to the development of mutually beneficial cooperation in the fields of economic, commercial, technical and scientific,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means any property and rights directly related to an investment made by investors of one Contracting Party in accordance with the legislation of the other Contracting Party and in particular but not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as the right of use or right of property protection related to the ownership of such property, including in particular the mortgage and pledge;
- b) Shares and other forms of participation in the capital of companies and in the economic benefits of the companies;
- c) The right to claim monetary or other benefits of economic value;
- d) Copyright, industrial property rights such as patents, factory or trade marks, trade names, industrial designs, know-how, trademarks and goodwill; know-how, trademarks and goodwill;
- e) Licenses conferred by law or contract, including concessions for exploration, exploration and exploitation of natural resources.

2. The term "revenue" means amounts received from investments over a specified period of time such as profits, dividends, interest, royalties or other remuneration, including any technical assistance or organizational and management assistance. If revenue from the investment as defined in this paragraph will be used for reinvestment, the revenue from these reinvestments will be considered as primary investment income.

3. The term "liquidation of investment" means a waiver of an investment in accordance with the procedure laid down by the legislation in force in the State in which the investment was made.

4. The term "investor" means:

- a) Natural persons having the nationality of the Contracting Party concerned;
- b) Associations of persons, including commercial law companies or other companies or associations with or without legal status, which are established in the territory of one of the Contracting Parties and which are established and operate in accordance with the law of the Contracting Party concerned.

5. The term "territory" means the territory of the Republic of Poland or the territory of the Portuguese Republic, as defined by the legislation of both Contracting Parties.

6. The term "investment accompanying activities" means the activities of organization, control, maintenance and

management mainly of companies, divisions, agencies, agencies or production and other units for the purpose of concluding, exercising and enforcing contracts for the acquisition, use, use or disposition of Property, including industrial property rights, borrowing, acquisition and issue of shares or other securities, and the purchase of foreign currency.

## **Article 2.**

1. Both Contracting Parties will support in their territory investments by investors of the other Contracting Party and will authorize such investments in accordance with their legislation and other regulations.
2. Contracting Parties shall, in their internal legislation, consider applications for the entry and residence of natural persons of one Contracting Party in the territory of the other Contracting Party in connection with the taking up and pursuit of the investment. This also applies to employees of one Contracting Party wishing to reside in the territory of the other Contracting Party for the purpose of commencing work for remuneration under the investment. Work permit applications will also be welcomed.

## **Article 3.**

1. Neither Contracting Party shall invest in its territory investments made by investors of the other Contracting Party to less favorable treatment than those accorded to investments by third country investors.
2. Neither Contracting Party shall provide investors of the other Contracting Party with respect to activities accompanying investments in its territory which are less favorable than those accorded to third country investors.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to more favorable treatment granted or to be granted by Contracting Parties to investments by third country investors as a result of :
  - a) Membership in customs unions, free trade zones or organizations, or in other forms of assistance, cooperation and economic integration;
  - b) Double taxation agreements and other tax treaties.

## **Article 4.**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party may not be expropriated, nationalized or subjected to other measures having equivalent effect to expropriation or nationalization unless such actions are undertaken in the public interest and compensation. The compensation should correspond to the value of the expropriated investment at the date of expropriation, nationalization or measures having equivalent effect. Compensation should be paid without delay and should include accrued interest at the usual bank rate until the date of full repayment and should be freely transferable. No later than the moment of expropriation, nationalization or taking measures having equivalent effect, appropriate decisions should be taken to determine the amount of compensation and how to pay it.
2. Citizens of each Contracting Party whose investment has been wholly or partially expropriated have the right to demand immediate examination by the appropriate judicial or administrative authorities of the other Contracting Party whether such expropriation and compensation for compensation are in accordance with this Agreement and the principles of international law.
3. Investors of one Contracting Party whose investments suffer losses in the territory of the other Contracting Party as a result of the war or other armed conflict, revolution, emergency or insurrection, shall be accorded by the other Contracting Party for reproduction, compensation, indemnity and other forms. Redress, treatment no less favorable than that accorded to investors of third countries. The resulting payments will be freely transferable.

## **Article 5.**

1. Each Contracting Party shall provide, in accordance with its own legislation, to the investors of the other Contracting Party the free transfer of investment-related amounts, namely:
  - a) Capital and additional amounts necessary to maintain and expand the investment;
  - b) The revenues referred to in Article 1 point 2 of this Agreement;
  - c) The amounts necessary for servicing and repaying loans recognized by both Parties as investments;

- d) Receipts from total or partial liquidation or sale of investments;
- e) Compensation and other charges provided for in Article 4 of this Agreement, Article 4 of this Agreement;
- f) Any payments that will have to be made as a result of the subrogation provided for in Article 6 of this Agreement.

2. The transfers referred to in this article will be made without delay at the rate applicable at the date of execution. The exchange rate should be set according to the cross-rate based on the exchange rate set by the International Monetary Fund on a given day as the basis for the exchange rate of the relevant currencies under the special cross-rate crossover. Given day by the International Monetary Fund as the basis for the exchange rate of the respective currencies under the special drawing rights.

3. For the purpose of this article, it is considered that the transfer was made "without delay" if its execution took place within the time normally necessary to fulfill the formalities. The deadline will be counted from the date of submission of the appropriate application to the required documents, but in no case may it exceed three months.

## **Article 6.**

1. If one of the Contracting Parties or its agency make any payment to one of its investors under a guarantee granted in connection with an investment executed in the territory of the other Contracting Party, that first Contracting Party shall be entitled to take over the investor's rights and activities. And will be able to implement them under the same terms and conditions as their original holder.

2. In the case of the subrogation referred to in paragraph 1 of this Article, the investor shall not make claims unless it is authorized by the Contracting Party or its agency. Section 1 of this Article shall not pursue a claim unless otherwise authorized by the Contracting Party or Her agency.

## **Article 7.**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be resolved amicably by diplomatic means, as far as possible.

2. If the dispute can not be resolved in this way within 12 months, it will be submitted to the arbitral tribunal at the request of either Contracting Party.

3. The arbitral tribunal will be set up for each case separately, with each Contracting Party nominating one arbitrator. These two arbitrators will agree among themselves a third-country national as chairman, to be appointed by the Contracting Parties. Arbitrators will be appointed within two months, and the chairman - within three months of the date of notification of one Contracting Party by the other Contracting Party, of the wish to submit a dispute to the arbitral tribunal.

4. If the time limits set in paragraph 3 are not respected, each Contracting Party may, in the absence of any other arrangements, request the President of the International Court of Justice to make the necessary appointments. If the President can not fulfill his / her function or if he / she is a national of one of the Contracting Parties, the Vice-Chairman will be asked to make the nomination. If also the Vice-President can not fulfill the above function or if he or she is a national of one of the Contracting Parties, the most senior Judge of the Tribunal, who is not a national of either Contracting Party, shall be required to make the necessary appointments. The Party may, in the absence of any other arrangements, request the President of the International Court of Justice to make the necessary appointments.

5. The arbitral tribunal shall rule by a majority of votes. Its rulings are binding. Each Contracting Party shall bear the costs of its own arbitrator as well as the costs of participation of the arbitrators. The costs of participation of the President of the tribunal, as well as other costs, shall be borne by both Contracting Parties in equal parts. The arbitral tribunal may, however, set other rules for covering costs. The arbitral tribunal determines the procedure of its own proceedings.

## **Article 8.**

1. Disputes that arise between a Contracting Party and an investor of the other Contracting Party in connection with an investment should be settled as far as possible by amicable means.

2. If a dispute is not resolved within six months from the date on which one of the interested parties initiates it, then the dispute will be submitted at the request of one of the interested parties to arbitration. Both Contracting Parties agree to this agreement. Unless otherwise agreed jointly, the provisions of Article 7, paragraphs 3 to 5, shall apply mutatis mutandis, provided that the parties to the dispute appoint arbitrators in accordance with the procedure laid down in paragraph 3 of

the above-mentioned article, and where the time limits provided for in that Article are not respected. The parties to the dispute may apply to the International Chamber of Commerce in Paris for the necessary nominations. An arbitration award will be executed in accordance with the law of the state in which the dispute occurred.

3. If both Contracting Parties are or will become parties to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Second Countries, they shall not, in accordance with the provisions of Article 27, paragraph 1 of the Convention, apply to the arbitral tribunal provided for in the preceding paragraph. This article is due to the existence, among the investors of one of the Contracting Parties and the other Contracting Party of the agreement referred to in Article 25 of the Convention. This does not preclude the possibility of referring to the arbitral tribunal referred to in the preceding paragraph of this Article in the event of failure to comply with a judgment of an arbitral tribunal established under Article 27 of the Convention or in the case of transfer of rights under the Act or under a legislative act in accordance with the provisions of article 6 of this Agreement.

## **Article 9.**

If the provisions of another international agreement to which both Contracting Parties are parties or the internal rules of either Contracting Party contain more favorable rules than those provided for in this Agreement, such regulations shall take precedence over this Agreement.

## **Article 10.**

This Agreement shall apply to all investments made in accordance with applicable laws by investors of one Contracting Party in the territory of the other Contracting Party after 26 May 1976.

## **Article 11.**

1. This Agreement shall enter into force on the date on which both Contracting Parties notify each other of the fulfillment of the legal requirements for the entry into force of international agreements.

2. This agreement will remain in force for a period of 10 years. After expiry they will be extended for 5 years, unless either of the Contracting Parties denounces it by notification 12 months prior to the expiry of the 10-year or 5-year period.

3. In the event of termination of this Agreement, the provisions of Articles 1 to 10 shall remain effective for a further period of 10 years in respect of investments made prior to the entry into force of the termination. Article 1 to 10 shall remain effective for a further period of 10 years in respect of investments made before the entry into force. notice.

Under the authority of the Government

Polish Republic

I. Byczewski

Under the authority of the Government

Portuguese Republic

V. A. Mandes Da Costa Martins