

# Agreement between the Republic of Poland and the Republic of Lithuania on the mutual support and protection of investments

## Preamble

The Republic of Poland and the Republic of Lithuania, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties,

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

(a) Natural persons having the nationality of the Contracting Party;

(b) Legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities, in territory of that same Contracting Party;

(c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities in the territory of that Contracting Party; it being understood that control requires substantial part in the ownership.

(2) The term "investment" means any kind of asset invested by an investor of one Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party and shall include in particular though not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

b) Shares, parts or any other kinds of participation in companies;

c) Claim to money or to any performance having an economic value;

d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

e) Rights granted by a public authority to carry out an economic activity, including concessions, for example, to search for, extract or exploit natural resources;

(3) Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.

(4) If the investment is made by an investor through an entity covered by paragraph 1 letter (c) of this Article, in which he holds an equity participation, such investor shall enjoy the benefits of this Agreement to the extent of such indirect equity participation, provided, however, that such an investor shall not enjoy the benefits of this Agreement if the investor invokes the dispute settlement mechanism under another foreign investment protection agreement concluded by the Contracting

Party in whose territory the investment is made. letter (c) of this Article, in which he holds an equity participation, such investor shall enjoy the benefits of this Agreement to the extent of such indirect equity participation, provided, however, that such an investor shall not enjoy the benefits of this Agreement if the investor invokes the dispute settlement mechanism under another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

(5) The term "returns" means all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees or other current income.

(6) The term "territory" means the territory of the Republic of Poland or the territory of The Republic of Lithuania respectively as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of either of the above territories, over which the Contracting Party concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of natural resources of such areas.

## **Article 2. Promotion and Admission of Investments**

(1) Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality,

## **Article 3. Protection and Treatment of Investments**

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and should it so happen, liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favorable than that accorded to investments of investors of any third State.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in or association with a free trade area, customs union, common market or organization for mutual economic assistance or to an existing or future convention on the avoidance of double taxation or an convention on other fiscal matters.

## **Article 4. Expropriation and Compensation**

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or an equivalent effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation and be freely transferable.

The amount of compensation shall be settled in the convertible currency and paid without undue delay to the person entitled there to without regard to its residence or domicile unless otherwise agreed between the Parties. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

(2) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or that accorded to investors of any third State. Resulting payments shall, whenever possible, be transferable without delay.

(3) Investors referred to in Article 1, paragraph (1), letter c) may not raise a claim passed on paragraph (1) or (2) of this Article

if compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.letter c) may not raise a claim passed on paragraph (1) or (2) of this Article if compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

## **Article 5. Transfer**

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investments the free transfer of the payments in freely convertible currency relating to the these investments, particularly of:

- a) The capital and additional sums necessary for the maintenance and development of the investment;
- b) Gains, profits, interests, dividends and other current income;
- c) Funds in repayment of loans regularly contracted and documented and directly related to a specific investment;
- d) Royalties and fees;
- e) The process from a total or partial liquidation of an investment;
- f) Compensations provided for in Article 4:Article 4:
- g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.

(2) Transfers in freely convertible currency shall be effected without delay in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not imply a rejection, a suspension or denaturalization of such transfer.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraph (1) and (2) of this Article a treatment no less favourable that accorded to transfers originating from investments made by investors of any third State.paragraph (1) and (2) of this Article a treatment no less favourable that accorded to transfers originating from investments made by investors of any third State.

## **Article 6. Subrogation**

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the investor.

The Contracting Party or any agency thereof which is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

(2) In the case of subrogation as defined in paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

## **Article 7. Disputes between One Contracting Party and an Investor of the other Contracting Party**

(1) Disputes between one of the Parties and an investor of the other Party shall be notified in writing, including a detailed information, by the investor to the host Contracting Party of the investment. As far as possible the Parties shall endeavour to settle these differences by means of a friendly agreement.

(2) If these disputes cannot be settled in this way within six months from the date of the written notification mentioned in paragraph (1) the conflict shall be submitted, at the choice of the investor to:paragraph (1) the conflict shall be submitted, at the choice of the investor to:

- A court of arbitration in accordance with the Rules of Procedure of the Arbitration Institute of the Stockholm Chamber of Commerce;

- The court of arbitration of the Paris International Chamber of Commerce;
- The ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law;
- The International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", in case both Contracting Parties have become signatories of this Convention.

## **Article 8. Disputes between Contracting Parties**

(1) Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitration tribunal of three members.

Each Contracting Party shall appoint arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the case specified under paragraphs (3) and (4) of this Article, the President of International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party. paragraphs (3) and (4) of this Article, the President of International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

(7) The decisions of the tribunal are final binding for each Contracting Party.

(8) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

## **Article 9. More Favourable Provisions**

If the domestic law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Party in general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

## **Article 10. Consultations and Exchange of Information**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

## **Article 11. Application**

This Agreement shall also apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party after December 29, 1990 and accepted in accordance with the respective legislation of either Contracting Party.

## **Article 12. Entry Into Force**

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

## **Article 13. Duration and Termination**

(1) This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period or period unless, one year before the expiry of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period ten years from the date of termination of this Agreement.

Done at Warsaw, on this 28 September 1992, in two copies in Polish, Lithuanian and English languages, all text being equally authentic. In case of divergency the English text shall prevail.

For the Government of the Republic of Poland

For the Government of the Republic of Lithuania