

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

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

Striving for the development of economic cooperation based on the principles of equality and mutual benefit,

With a view to creating and maintaining favorable conditions for investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and mutual protection of investment by the Contracting Parties will contribute positively to the movement of capital, the revitalization of entrepreneurship and the economic development of both Contracting Parties,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all types of financial and tangible resources, property values and intellectual property rights invested by investors of one Contracting Party in the operation of various facilities in the territory of the other Contracting Party for the purpose of obtaining profits, in particular, but not limited to:

- movable and immovable property, such as buildings and equipment, and related property rights,
- cash and stock options, bonds and other forms of participation in companies,
- cash claims or claims for other assets and services of economic value,
- Intellectual property rights, such as, for example, production technology and know-how,
- the right to pursue a business activity, including the right to search, explore, extract and exploit natural resources, granted under the contract or legislation of the Contracting Party in whose territory such activity is carried out.

2. the term "investor" means:

- a natural person holding the nationality of the Republic of Poland or the Republic of Belarus in accordance with the legislation of the Contracting Parties, residing within or outside the territory of the Contracting Parties and making an investment in accordance with the legislation in force in each of the Contracting Parties,
- a legal person registered and having its registered office in the Republic of Poland or the Republic of Belarus in accordance with the legislation of the Contracting Parties and which carries out investment activities in accordance with the legislation of both States.

The Contracting Parties may by mutual agreement recognize as an investor also a legal person established in the territory of a third country and under the direct or indirect control of a legal or natural person of one of the Contracting Parties.

(3) "Income" means sums of money and other property rights acquired or to be acquired as a result of the investment and includes in particular, but not exclusively - profits, interest, dividends, royalties and other charges, whether in cash or in kind.

(4) the term "territory" shall mean, in relation to the Republic of Belarus, the area constituting the state territory of the Republic of Belarus, and in relation to the Republic of Poland, the territory of the Republic of Poland and all of the following areas adjacent to its territorial waters over which the Republic of Poland exercises sovereign rights and jurisdiction in accordance with international law and its own legislation.

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

1. The Contracting Parties undertake to provide in their territory favorable conditions for existing or future investments made by investors of the other Contracting Party under the legislation in force in both States.
2. Each Contracting Party, by issuing a permit to invest in its territory through an investor of the other Contracting Party, shall accord all the rights, privileges and facilities of its legislation in force.
3. Each Contracting Party shall accord to the investor of the other Contracting Party the right to employ, at his or her choice of managerial, administrative and technical staff, regardless of nationality and shall provide all facilities, including visas and residence permits, in accordance with the legislation of each Contracting Party.
4. The Contracting Parties will carry out consultations with the competent authorities on the investment opportunities existing in their respective territories in different spheres of the economy.
5. In pursuance of the objectives of this Agreement as well as for the implementation of investment projects in various sectors of the economy, the Contracting Parties shall encourage and facilitate the formation of joint economic units with the participation of their investors, in accordance with the applicable legislation of the Contracting Parties.

## **Article 3. Investment Treatment**

1. Each Contracting Party shall accord to investments and activities related to investments made in its territory by investors of the other Contracting Party treatment no less favorable than that granted by it to investment and investment-related activities by its own investors or investors of any third country. Each Contracting Party will extend such treatment to the investor's rights to manage, operate, purchase, sell, transfer the investment, including the right to obtain and transfer revenue.
2. The provisions of paragraph 1 shall not apply where:
  - one of the Contracting Parties is or will become a party to a multilateral or bilateral operational relationship, economic union, customs union, monetary union, free trade zone or other analogous regional economic cooperation organizations,
  - one of the Contracting Parties will accede to the agreement establishing such organizations,
  - one of the Contracting Parties is a party to any international or regional agreement relating wholly or principally to tax matters or capital movements.

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

1. Neither Contracting Party shall take, directly or indirectly, any nationalization, expropriation or other action of a similar nature or equivalent effect to investments of the other Contracting Party, except in cases where such activities are undertaken in the national interest. Discriminatory character and shall comply with the legislation of the Contracting Party concerned. Such actions will be accompanied by fast, real and proper compensation.
2. Such compensation will correspond to the real market value of the investment, either before the expropriation or at the time of the announcement of the nationalization or expropriation decision.

Where the value of the investment will be difficult to quantify, then the extent of the compensation will be determined in accordance with the principle of mutual benefit, taking into account the amount of invested capital, depreciation rate, capital growth and other accompanying factors.

3. Unless the investment consent agreement provides otherwise, compensation should be made in such currency and in the form in which the investment was made.
4. Contracting Parties shall provide the investor with an immediate transfer of compensation payments irrespective of his place of residence.
5. Each Contracting Party shall provide investors of the other Contracting Party with losses due to war or other armed conflict, exceptional state, insurrection, riots or other similar events, treatment no less favorable than that accorded to its own investors or investors of a non-member country.

## **Article 5. Payments and Transfers**

1. Each Contracting Party on whose territory investments have been made by investors of the other Contracting Party will provide these investors with a free transfer of payments related to those investments, namely:

- Primary capital and additional amounts necessary to maintain and expand the investment,
- income, profits, interest, dividends and other current receipts,
- amounts for repayments of loans and borrowings, taken in due course and related to a particular investment,
- royalties and fees,
- receipts for the total or partial liquidation of the investment,
- the compensation provided for in Article 4 of this Agreement,
- remuneration of citizens of one Contracting Party holding an investment permit in the territory of the other Contracting Party.

2. Transfers shall be made without delay in a currency convertible at the rate of exchange applicable on the date of transfer in accordance with the legislation of the Contracting Party in whose territory the investments are located.

The term "without delay" means a period not exceeding three months.

3. For the transfer of payments referred to in paragraphs 1 and 2 of this Article, Contracting Parties shall apply treatment no less favorable than that accorded by them to investors of the third country.

## **Article 6. Subrogation**

1. If a Contracting Party or its authorized agency makes a payment to its investor under a guarantee or an insurance contract in connection with an investment, the other Contracting Party shall consider transferring all rights of the investor to the first Contracting Party or its agency. The Contracting Party making the subrogation is entitled to the same rights as the investor and takes over the investor's obligations related to the insured investment.

2. In the case of the subrogation referred to in paragraph 1 of this Article, the investor shall not be entitled to claim claims unless it is authorized by a Contracting Party or its agency. Section 1 of this Article may not be enforceable if it is not authorized to do so. By a Contracting Party or its agency.

## **Article 7. Settling Disputes between a Contracting Party and the Investors of the other Contracting Party**

1. A dispute between one Contracting Party and an investor of the other Contracting Party shall be settled amicably by negotiation, or be submitted to the judicial authorities of the Contracting Parties.

By mutual agreement, the dispute may be resolved by an international arbitration tribunal appointed in accordance with the provisions of paragraphs 2 to 8 of article 8 of this Agreement.

2. Settlement of the dispute by the arbitral tribunal will be based on:

- the provisions of this Agreement,
- the legislation of the Contracting Party in whose territory investments have been made, including rules of conflict of law,
- generally accepted principles and norms of international law.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations and consultations conducted through diplomatic channels.

2. If the Contracting Parties fail to settle the dispute within twelve months, the dispute may be brought at the request of any Contracting Party submitted to an international arbitral tribunal in accordance with the provisions of this Article.

3. The international arbitral tribunal will be set up as follows:

Each Contracting Party shall appoint one arbitrator, each of whom shall elect a chairman. The chairperson of the

international arbitral tribunal should be a national of a non-member state holding diplomatic relations with both Contracting Parties.

4. If one of the Contracting Parties fails to elect its arbitrator within two months of receipt of the request for the establishment of an arbitral tribunal, or if neither of the arbitrators reach agreement on the candidacy of the chairman, either Contracting Party may request the appropriate nominations to the President of the International Court of Justice.

5. If the President of the International Court of Justice is prevented from performing the function referred to in paragraph (4) of this Article, or if he is a national of one of the Contracting Parties, the Vice-President or, if he is also a national of one of the Contracting Parties, the most senior judge of the International Court of Justice who is not a national of one of the Contracting Parties, shall make the nomination.

6. The arbitration tribunal shall fulfill its function in accordance with the procedure agreed upon with the Contracting Parties and shall take its decisions by a majority of votes.

7. Judgments of the arbitral tribunal are final and enforceable by both Contracting Parties.

8. Each Contracting Party shall bear the costs of its own arbitrator. The costs of the chairperson and other expenses related to the maintenance of the arbitration tribunal shall be borne by the Contracting Parties in equal parts unless the arbitral tribunal decides otherwise.

## **Article 9. Special Provisions**

Where provisions contained in the legislation of the Contracting Parties, or where obligations under international law or international agreements which the Contracting Parties may sign in the future, afford investments more favorable treatment than that provided for in this Agreement, such provisions shall prevail over the provisions of this Agreement in so far as they create more favorable treatment.

## **Article 10. Scope of Application**

The provisions of this Agreement shall also apply to investments by investors of one Contracting Party existing in the territory of the other Contracting Party prior to the signature of this Agreement.

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

This Agreement shall enter into force after the exchange of notes between the Contracting Parties that the legal requirements provided for by their legislation as regards the entry into force of this Agreement have been complied with.

At the request of one of the Contracting Parties, this Agreement may be amended or supplemented with the agreement of both Parties.

## **Article 12. Duration and Termination**

This Agreement is concluded for a period of ten years and thereafter renewable for five years if one of the Contracting Parties fails to notify the other Contracting Party in writing six months before the original or subsequent termination of this Agreement.

Upon termination of this Agreement, its provisions shall remain in force for a further period of ten years in relation to investments made prior to its termination.

Done at Warsaw on 24 April 1992 in duplicate, each in the Polish and Belarusian languages, both texts being equally authentic.

On behalf of the Republic of Poland

J. Olszewski

on behalf of the Republic of Belarus

W. Kebicz

