

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Poland and the Government of the Kingdom of Norway,

Desiring to develop the economic cooperation between the two States, each being hereinafter referred to as a "Contracting Party",

Preoccupied with encouraging and creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Conscious that the promotion and reciprocal protection of investments, in accordance with the present Agreement will stimulate the initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of the present Agreement:

1. The term "investment" shall mean every kind of asset and in particular, though not exclusively:

(i) Movable and immovable property and any other property rights such as mortgages, pledges, liens, and similar rights;

(ii) Shares, debentures or any other forms of participation in companies;

(iii) Claims to money which has been used to create a financial value or claims to any performance under contract having an economic value;

(iv) Industrial and intellectual property rights, such as technology, know-how, trade-marks and goodwill;

(v) Business concessions having financial value that are required to conduct economic activity in accordance with the law of the Contracting Party concerned and are conferred by law, administrative decision or contract, including concessions to search for, cultivate, extract and exploit natural resources.

2. The term "returns" shall mean the lawful amounts yielded from an investment such as profit, interest, royalties, fees, dividends and other lawful income derived from investments.

3. The term "investor" shall mean with respect to each Contracting Party:

A) A natural person who is a citizen of the Contracting Party according to its law;

B) Any company, firm, organization or association incorporated or constituted in accordance with the laws of that Contracting Party with a seat in its territory.

4. The term "territory" shall mean the territory of the Republic of Poland and the territory of the Kingdom of Norway, as well as the territorial sea and the Continental Shelf over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

Article 2. Applicability of this Agreement

The present Agreement shall apply to investments made after January 1, 1975 in the territory of a Contracting Party in accordance with its laws and regulations.

Article 3. Promotion and Protection of Investments

Each Contracting Party shall promote and encourage in its territory investments made by investors of the other Contracting Party and accept such investments in accordance with its laws and regulations and accord them equitable and reasonable treatment and protection. Such investments shall be consistent with the national objectives of and be subject to the laws and regulations of the Contracting Party in the territory of which the investments are made.

Article 4. Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State.

2. Notwithstanding the provisions of paragraph (1) of this Article, a Contracting Party

(A) Which has concluded an agreement regarding the formation of a customs union, common market, a free-trade area, or

(B) Which has concluded a multilateral agreement on economic co-operation for mutual economic assistance,

shall be free to grant more favourable treatment to investments by an investor of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

3. The treatment granted under paragraph (1) of this Article shall not apply to any advantage accorded to investors of a third State by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, revolution, other armed conflict, a state of national emergency, or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments, if any, shall be freely transferable.

Article 6. Expropriation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party cannot be expropriated, nationalized or subjected to other measures having the same effect (all such measures hereinafter referred to as "expropriation"), unless the following conditions are fulfilled:

(i) The expropriation shall be done for public interest and under domestic legal procedures;

(ii) It shall not be discriminatory;

(iii) It shall be done only against compensation.

2. Such compensation shall amount to the market value of the investment immediately before the date of expropriation and shall be paid without undue delay within such a period as normally required for the completion of transfer formalities, in any case not exceeding three months. The compensation shall include interest, computed from the first day following the above mentioned period until the date of payment, at a rate based on LIBOR for the appropriate currency and corresponding period of time.

Article 7. Transfers

1. Each Contracting Party guarantees, subject to and to the extent permitted by its law and regulations, to the investors of the other Contracting Party, in respect of their investments, without undue delay the transfer of:

(i) Returns, royalties and other income resulting from investments;

(ii) The proceeds of the total or partial liquidation or alienation of an investment;

(iii) Funds in repayment of borrowings in connection with an investment and interest due;

- (iv) Capital and additional sums for the maintenance or development of the investment;
- (v) Sums appropriated for the coverage of expenses connected with the management of the investment;
- (vi) The earnings of the citizens of the other Contracting Party who work within the framework of an investment.

2. Transfers of currency pursuant to paragraph (1) of this Article shall be made without undue delay in the convertible currency in which the investment was made or in any other convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article 8. Subrogation

1. A Contracting Party which makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party is entitled, by virtue of subrogation, to exercise the rights and claims of the investor and shall assume the obligations related to the investment, including taxes and other public charges due and payable from the investor. The subrogation in the rights and obligations of the insured investor extends also the rights of transfer under Article 6. The paying Contracting Party can not obtain rights or assume obligations greater than those of the insured investor.

2. In the case the Contracting Party which has made the payment to its investor takes over all rights and claims of the investor, then the investor shall not pursue these rights and claims against the other Contracting Party unless he is authorized to do so on behalf of the former Contracting Party.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of the present Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations, 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 three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These 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 five months from the date when one of the Contracting Parties informs the other Contracting Party of the request of submitting the dispute to the arbitration tribunal.

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 President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal determines its own procedure. The tribunal reaches its award on the basis of the provisions of the present Agreement and of the general principles and rules of international law. The tribunal shall upon request of either Contracting Party State the reasons upon which the award is based. The arbitral tribunal reaches its award by majority vote. Such award shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation 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 may however in its award direct that a higher proportion of costs shall be borne by one of the Contracting Parties, and this award shall be binding on both Contracting Parties.

Article 10. Disputes between a Contracting Party and an Investor

1. Disputes between a Contracting Party and an investor of the other Contracting Party concerning an obligation of the latter under Article 6 of the present Agreement in relation to the investment of the former which have not been amicably settled within 6 months from the date of a written notification of a claim shall be submitted to settlement before an ad hoc

international arbitration tribunal, if either party to the dispute so wishes.

2. The ad hoc international arbitration tribunal shall be constituted for each individual case in the following way:

Within two months of the receipt of the request for arbitration, each party to the dispute shall appoint one member of the tribunal. These two members shall then select jointly within two months the Chairman of the tribunal who is not national of the either Contracting Party. Each party to the dispute may, in absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. The tribunal shall determine its own procedure, applying the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL) of December 15, 1976. The tribunal reaches its award by a majority of votes.

The tribunal reaches its award on the basis of the provisions of the present Agreement as well as on the general principles and rules of international law. The award shall be final and binding and shall be carried out according to domestic legislation. Each Contracting Party shall ensure the recognition and execution of the arbitral award in accordance with the appropriate provisions of its legislation.

3. Each party shall bear the costs of participation of its member in the arbitration procedure. The costs of participation of the Chairman shall be borne in equal parts by both parties. The tribunal may, however, in its award decide on a different proportion of costs to be borne by the parties and this award shall be binding on both parties.

Article 11. Consultation

The representatives of the Contracting Parties shall, whenever needed hold meetings in order to review the implementation of the present Agreement. These meetings shall be held on the proposal of one Contracting Party, at a place and at a time agreed upon through diplomatic channels.

Article 12. Entry Into Force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing the present Agreement into force. The present Agreement shall enter into force thirty days after the date of the second notification.

Article 13. Duration and Termination

1. The present Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter unless, after the expiry of the initial period of fifteen years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this 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 the present Agreement becomes effective, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from that date.

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

Done at Warsaw on 5th Juni 1990 in duplicate in the Norwegian, Polish and English languages, all texts being equally authentic.

In case of divergencies of interpretation the English text shall prevail.

For the Government of the Republic of Poland

For the Government of the Kingdom of Norway