

Agreement between the Republic of Poland and the Republic of Cyprus for the Promotion and Mutual Protection of Investments

The Republic of Poland and the Republic of Cyprus,

Hereinafter referred to as the Contracting Parties,

Desiring to intensify their economic cooperation to the mutual benefit of both states on a long term basis,

Having as their objective to create favourable conditions for investments by investors or either Party in the territory of the other Party,

Recognizing that the promotion and protection of investments, on the basis of the present Agreement, will stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

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

- (a) Movable and immovable property as well as any other property rights in respect of every kind of asset;
- (b) Rights derived from shares, bonds and other kinds of interests in companies;
- (c) Title to money, goodwill and other assets and to any performance having an economic value;
- (d) Rights in the field of intellectual property, technical processes and know-how.

These investments shall be made in compliance with the laws and regulations and any written permits that may be required thereunder of the Contracting Party in the territory of which the investment has been made.

A possible change in the form in which the investments have been made does not affect their substance as investments, provided that such a change does not contradict the laws and regulations and written permits of the Contracting Parties.

2. The term "income" means those net amounts received from the investments for a certain period of time, such as shares of profits, dividends, interest, royalties and other fees, proceeds from total or partial liquidation of the investments, as well as any other sums emanating from such investments which are considered as income under the laws of the host country.

3. The term "investor" shall comprise with regard to either Contracting Party:

- (a) Natural persons having the citizenship of that Contracting Party in accordance with its law;
- (b) Legal persons constituted or incorporated in compliance with the law of that Contracting Party,

Who, in compliance with this Agreement are making investments in the territory of the other Contracting Party.

4. The term "guarantor" means:

- (a) Either of the two Contracting Parties;
- (b) Any government or semi-government institution of the Contracting Parties;
- (c) Any other public institution of the Contracting Parties for which the said Parties have mutually agreed in advance as to its acceptability as a guarantor;

(d) Any multilateral institution which is mutually acceptable to the Contracting Parties and to which both Parties are members by virtue of a relevant international Convention.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory the investments by investors of the other Contracting Party.
2. Investments permitted in compliance with the laws and regulations of the Contracting Party in the territory of which they are made, enjoy the protection of the present Agreement.
3. In cases of approved reinvestments, the incomes ensuing therefrom enjoy the same protection as the original investments.
4. The present Agreement shall apply to all investments made in the territory of either Contracting Party by investors of the other Contracting Party after its entry into force.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.
2. More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded to investments of investor of any third State.
3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing custom unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.
4. The treatment granted under the present Article shall not extend to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting Party to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation, or on the basis of reciprocity with a third State.

Article 4. Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:
 - (a) The measures are taken in the public interest and under due process of law;
 - (b) The measures are not discriminatory;
 - (c) The measures are accompanied by provision for the payment of prompt, adequate and effective compensation.
2. The amount, of this compensation may be estimated according to the laws and regulations of the country where the expropriation is made.
3. The compensation shall amount to the market value of the investments affected immediately before the measures referred to in paragraph (1) above, were taken or became public. The compensation shall be paid without unreasonable delay and be remitted abroad at the request of the investor in a freely convertible currency at the bank rate of exchange on the date of transfer.

Article 5. Repatriation of Investment and Income

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and the ensuing income. The transfers shall be effected, without delay, in a freely convertible currency and at the bank rate of exchange applicable on the date of transfer.
2. Such transfers include in particular, though not exclusively:
 - (a) Capital and additional amounts to maintain or increase the investment;

(b) Profits, interest, dividends and other current income;

(c) Funds in repayment of loans;

(d) Royalties and other fees;

(e) Proceeds of sale or liquidation of the whole or any part of the investment;

(f) Normal earnings of nationals of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

Article 6. Subrogation

1. If a guarantor, pays compensation to the investors of one Contracting Party pursuant to a guarantee providing coverage for an investment made in the territory of the other Contracting Party, the latter shall recognise that the guarantor is subrogated into the rights of the indemnified investors; the subrogation of rights shall also apply to the rights of transfer referred to in Article 5 of this Agreement.

2. Any payment of compensation, as per para. 1 of this Article, shall not affect the right of the investors of one Contracting Party to take arbitration proceedings against the other Contracting Party in accordance with Article 9 of this Agreement. The guarantor shall exercise the subrogated rights to the extent of the proportion of the risk covered by the contract of guarantee, and the investor entitled to benefit from the guarantee shall exercise the remaining rights to the extent of the proportion of such rights not covered by the guarantee.

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3. As far as the transferred rights are concerned, the other contracting Party shall be entitled to invoke against the guarantor who is subrogated into the rights of the indemnified investors the relevant obligations of the latter under law or contract, including payments of taxes and fees.

4. So as to facilitate the subrogation provisions of this Article, it is hereby agreed that the investors and guarantors covered under this Agreement shall follow the internationally recognised accounting practices as regards the guaranteed investments in the territory of the other Contracting Party.

5.

(a) In case where the guarantor falls under the categories noted in para. 4(a) or (b) of Article 1 of this Agreement, disputes between the guarantor and the other Contracting Party shall be settled in accordance with the provisions of Article 8 of this Agreement.

(b) In case the guarantor falls under category (c) of para. 4 of Article 1 of this Agreement, any dispute between the guarantor and the other Contracting Party shall be settled under the procedure of arbitration as provided in Article 9 of the Agreement.

(c) In case the guarantor is a multilateral institution, as per para. 4(d) of Article 1 of this Agreement, any dispute between the guarantor and the other Contracting Party shall be settled under the principles of international law and the relevant rules provided for by the international Convention establishing the aforesaid multilateral institution, para. 4(d) of Article 1 of this Agreement, any dispute between the guarantor and the other Contracting Party shall be settled under the principles of international law and the relevant rules provided for by the international Convention establishing the aforesaid multilateral institution,

Article 7. Application of other Rules

If the provision of law of either Contracting Party or provision of international agreement established between the Contracting Parties contain, at present or hereafter, rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, such rules shall prevail over the present Agreement.

Article 8. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. The arbitral tribunal shall be constituted as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, any Party to the dispute 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 of the Court is a national of any Party to the dispute or if he is otherwise prevented from discharging the said function, the Vice-President or if he is a national of any Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of any Party to the dispute, shall be invited to make the necessary appointments. paragraph 3 of this Article the necessary appointments have not been made, any Party to the dispute 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 of the Court is a national of any Party to the dispute or if he is otherwise prevented from discharging the said function, the Vice-President or if he is a national of any Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of any Party to the dispute, shall be invited to make the necessary appointments.
5. The arbitral tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the universally acknowledged rules and principles of international law.
6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.
8. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the Chairman as well as the other costs will be borne in equal parts by the Contracting Parties.

Article 9. Disputes between an Investor and a Contracting Party

1. Any dispute between either Contracting Party and the investor of the other Contracting Party concerning expropriation of an investment shall, as far as possible, be settled by the disputing parties in an amicable way.
2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, it shall, upon request of the investor, be submitted to one of the following:
 - (a) The Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm;
 - (b) The Arbitral Tribunal of the International Chamber of Commerce in Paris;
 - (c) The International Centre for the Settlement of Investment Disputes in case both Contracting Parties have become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

Article 10. Review of the Agreement

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

Article 11. Other Provisions

1. Either Contracting Party will permit, in accordance with its laws, regulations and administrative practices followed, the entrance and stay of the investors, employees and workers of the other Party who are involved in activities connected with the investments.
2. The Contracting Parties shall not exclude or hinder the transport agencies of the other Contracting Party and whenever

necessary, shall issue permits for the transportation of goods and persons in connection with the investments made.

Article 12. Application

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party after its entering into force.

Article 13. Entry Into Force, Duration, Termination

1. Each Contracting Party shall notify the other Contracting Party of the completion of the internal procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

2. This Agreement is concluded for a period of 10 years. Its validity shall be extended for an indefinite period of time unless either Contracting Party notifies in writing, at least 5 months prior to its expiry, the other Contracting Party of its wish to terminate the Agreement. After the ten year period of validity each Contracting Party has the right to terminate the Agreement upon a 6 months' written notice. The termination shall become effective 6 months after the notification has been received by the other Contracting Party.

3. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement remain in force for a further period of 10 years from that date.

Done and signed in Warsaw on the 4th day of June 1992 in two originals in the Greek, Polish and English languages, all texts being equally authentic. In case of disagreements as regards the interpretation of the text the English version will prevail

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND

FOR THE GOVERNMENT OF THE REPUBLIC OF CYPRUS