

# Agreement between the Government of the Republic of Poland and the Government of Ukraine on Mutual Promotion and Protection of Investments

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

Striving to expand economic cooperation with mutual benefit for both states,

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

Recognizing the need to promote and protect foreign investment in order to contribute to the economic boom of both states,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1) The term "investor" means for each of the Contracting Parties:

- a) Natural persons having the nationality of the Contracting Party concerned,
- b) Legal persons, in particular companies, corporations, trade associations and other organizations, duly formed or organized in a manner consistent with the law of the State in whose territory they are established and carry on genuine economic activity,

2) The term "investment" means property, and in particular:

- a) Movable and immovable property as well as any other property rights such as a mortgage, merchants' right to detain, pledge,
- b) Shares, shares or any other types of shares in the company,
- c) Cash claims or claims for other benefits, having economic value,
- d) Intellectual property rights such as copyrights, patents, utility models, industrial designs and patterns, trademarks, trade names, production and trade secrets, production technologies, know-how and goodwill,
- e) The right to conduct business, including concessions for the exploration, extraction or exploitation of natural resources, as well as other rights conferred by law, contract or decision of the competent authority issued under the legislation of the State in whose territory the investment was made,

3) A change in the form of investment permitted under the laws and regulations of the State of the Contracting Party in whose territory the investment was made does not change its character as an investment,

4) The term "revenue" means the amounts obtained from an investment, and in particular includes profits, interest on capital, dividends, royalties, fees or other current income,

5) The term "territory" shall mean respectively the territory of the Republic of Poland or the territory of Ukraine as well as marine areas, including the seabed and subsoil adjacent to areas beyond the territorial sea of any of the territories above which the State exercises sovereign rights in respect of research and Exploitation of natural resources.

## **Article 2. Scope of Application**

This Agreement shall apply to investments in the territory of the State of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party if the investment is in connection with an economic activity and if it was effected after 1 September 1991.

## **Article 3. Promotion and Admission of Investment**

1. Each Contracting Party shall encourage the investments of investors of the State of the other Contracting Party in its territory and authorize such investments in accordance with its laws and regulations.
2. If a Contracting Party has granted an investment in its own territory, it will grant, in accordance with its legislation and other legal regulations, the necessary permits for the implementation of license agreements, technical, commercial or administrative assistance related to such investments. Each Contracting Party will, if necessary, make every effort to issue the necessary permits for the activities of advisers and other qualified foreign nationals.

## **Article 4. Protection and Treatment of Investment**

1. Each Contracting Party shall protect in its territory investments made in accordance with its laws and regulations by investors of the State of the other Contracting Party and shall not unreasonably or unjustly prejudice the rights of the investor of the State of the other Contracting Party to manage, maintain, gain benefits, expand business, sell and, if necessary, liquidate such investments.
2. Each Contracting Party shall ensure fair and equal treatment in its territory of investments by investors of the State of the other Contracting Party. This treatment shall be no less favorable than that accorded by each Contracting Party to investments made in its territory by investors of the most favored country.
3. The most-favored nation clause will not apply to privileges and relief which any Contracting Party grants to third country investors on account of its membership or membership of a free trade zone, customs union, common market or other form of regional economic integration or under any contract. On the avoidance of double taxation or other tax matters.

## **Article 5. Transfer**

1. Each Contracting Party in whose territory investments have been made by investors of the State of the other Contracting Party shall accord to these investors the free transfer of payments related to the investments made, in particular:
  - a) Interest, dividends, profits and other current income,
  - b) Repayment of loans,
  - c) Amounts intended to cover the cost of managing the investment,
  - d) Investment receivables and other payments resulting from the rights referred to in Article 1 (2) (c), (d) and (e) of this Agreement, subparagraphs (c), (d) and (e) of this Agreement,
  - e) The additional capital amounts necessary to maintain or develop the investment,
  - f) Proceeds from the sale or partial or total liquidation of the investment, including capital increase.
2. Transfers will be made without delay in convertible currency at the rate applicable on the date of transfer and in accordance with the procedure provided for by the legislation of the State of the Contracting Party in whose territory the investment was made.

## **Article 6. Expropriation and Compensation**

1. Neither Contracting Party shall take, directly or indirectly, any expropriation, nationalization or other action of equal or opposite effect to investments of investors of the State of the other Contracting Party unless these actions have been taken in the public interest and are not of a nature Discriminatory, and have been taken in accordance with the proper legal procedure, and also effective and proper compensation. Such compensation will correspond to the market value of the expropriated investment immediately prior to expropriation or before the expropriation becomes publicly known (whichever occurs first) and will include interest on the value of the expropriated investment from the date of expropriation

and will be freely transferable. The amount of compensation will be determined in the convertible currency and will be paid without undue delay to the eligible person irrespective of his / her place of residence or residence. The term "without undue delay" means the transfer made during the period normally required to complete the transfer formalities. The period starts on the day the application is submitted and can not exceed 3 months.

2. Investors of the burial of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, riots, emergency or other similar events occurring in the territory of the State of the other Contracting Party shall be treated as regards the restoration, Compensation or other compensation for losses - in accordance with the provisions of paragraphs 1 and 2 of Article 4 of this Agreement.

## **Article 7. More Favorable Treatment Clause**

Where the legislation or other legislation of a Contracting Party or existing obligations between the Contracting Parties in accordance with international law contains additional regulations which, in general or in detail, provide for investments made by investors of the other Contracting Party to treatment more favorable than provided for in this Agreement. Such regulations, to the extent that they are more favorable, shall take precedence over this Agreement.

## **Article 8. Subrogation**

1. If a Contracting Party or any of its agencies makes a payment to any of its investors under a guarantee or insurance concluded in connection with an investment, the other Contracting Party shall consider the transfer of all rights or claims of the investor by the first Contracting Party or its agency.

A Contracting Party or any agency thereof which has taken over the investor's rights is entitled to the same rights as the investor and to the same rights exercised by the investor, subject to the investor's obligations with respect to the person thus insured.

2. In the case of the subrogation referred to in paragraph 1 of this Article, the investor shall not make claims unless otherwise authorized by the Contracting Party or any of its agencies. Section 1 of this Article shall not pursue any claims unless otherwise authorized by the Contracting Party, or any of its agencies.

## **Article 9. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of the provisions of this Agreement shall be settled by diplomatic means.

2. If both Contracting Parties fail to reach an agreement within twelve months of the date of the dispute, the dispute shall be submitted to the arbitral tribunal of three members at the request of either Contracting Party. Each Contracting Party will designate one arbitrator, and the elected arbitrators shall nominate a chairman who will be a national of a non-Contracting Party with diplomatic relations with both Contracting Parties.

3. If one of the Contracting Parties fails to elect its arbitrator and does not join the other Contracting Party to make such a selection within two months, the arbitrator shall be appointed by the President of the International Court of Justice at the request of that Contracting Party.

4. If both arbitrators cannot reach an agreement on the choice of chairman within two months of their appointment, they will be appointed by the President of the International Court of Justice at the request of either Contracting Party.

5. If, in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice can not fulfill the said function or if he is a national of one of the Contracting Parties, the Vice-President shall designate him, and if he cannot or is a national of one of the Contracting Parties, the appointment will be made by the oldest senior judge of the Tribunal, who is not a national of any of the Contracting Parties.

6. Without prejudice to other provisions between the Contracting Parties, the tribunal shall determine its procedure. The Court shall rule by a majority of votes.

7. Each Contracting Party shall bear the costs of its own arbitrator and of its participation in the arbitration proceedings; The costs of the chairman and the remaining costs shall equally cover the Contracting Parties. However, the Court may, in its judgment, determine a greater share of the costs of one Contracting Party and such determination shall be binding on both Contracting Parties.

8. Judgments of the tribunal are final and binding on each of the Contracting Parties.

## **Article 10. Disputes between the Contracting Party and the Investor of the other Contracting Party**

1. Subject to the provisions of Article 9 of this Agreement, consultation will take place between the parties concerned. Article 9 of this Agreement shall be consulted between the interested parties.

2. If consultation fails to resolve within six months of the date of the written request for initiation of a consultation, the parties to the dispute may proceed as follows:

a) If the dispute concerns the obligations of Article 5 and Article 6 of this Agreement, it will be forwarded to the arbitral tribunal, Article 5, and Article 6 of this Agreement at the request of the investor, and will be forwarded to the arbitral tribunal at the request of the investor.

b) A dispute not referred to in paragraph 2 (a) of this article shall be referred to the arbitration tribunal.

3. The arbitral tribunal will be set up for each individual case. Unless the parties involved in the dispute agree otherwise, each of them will appoint one arbitrator. Appointed arbitrators will elect a president who will be a third-country national.

Arbitrators should be appointed within two months from the date of receipt of the request for referral to the arbitral tribunal and the chairman within the next two months.

4. If the terms in paragraph 3 of this article have not been complied with, any of the parties to the dispute may, in the absence of any other finding, request the President of the Court of Arbitration at the International Chamber of Commerce in Paris to make the necessary appointments. If the President is unable to perform the said function or is a national of a Contracting Party, the provisions of Article 9, paragraph 5, of this Agreement shall apply *mutatis mutandis*.

5. Unless otherwise agreed by the parties to the dispute, the tribunal shall determine its course of action. Decisions are final and binding. Each Contracting Party shall ensure the recognition and enforcement of arbitration awards.

6. Each party to the dispute will bear the costs of its member of the Tribunal and its own participation in the arbitration proceedings; The costs of the chairman and other costs will be borne equally by the parties to the dispute. However, the tribunal may, in its ruling, decide on a different proportion of the costs borne by one party and that decision will be binding on both parties.

7. The Contracting Party which is the party to the dispute may not invoke, at any stage of the amicable settlement or enforcement of the judgment, the fact that the investor has received compensation under the insurance contract covering all or part of the claimed damage.

8. Where both Contracting Parties become parties to the Convention of 18 March 1965 on Settlement of Investment Disputes between States and Citizens of other States, disputes shall be submitted to the International Center for Settlement of Disputes as follows: The disputes referred to in paragraph 2 (a) of this Article at the request of the investor, and the disputes listed in paragraph 2 (b) of this article, with the consent of both parties.

## **Article 11. Final Provisions**

1. The Contracting Parties shall exchange notes on the fulfillment of the legal requirements provided for in the legislation of the State of each of the Contracting Parties with regard to the entry into force of international agreements.

This agreement will enter into force on the day of receiving the later note.

2. This agreement will remain in force for a period of ten years. Its validity is automatically extended for successive five-year periods unless either of the Contracting Parties notifies the other Contracting Party in writing twelve months prior to the expiration of the period of validity of the intention to denounce this Agreement.

3. With respect to investments made prior to the date of expiry of this agreement, in the event of termination, the provisions of Articles 1 to 10 shall remain in force for a further period of ten years from that date. Articles 1 through 10 shall remain in force for a further period of ten years from that date.

Done in Kyiv on January 12, 1993 in two original copies, each in the Ukrainian and Polish languages, both texts being equally authentic.

Under the authority of the Government of the Republic of Poland

H. Suchocka

Under the authority of the Government of Ukraine

L. Kuźma