

# **Agreement between the Government of the Republic of Poland and the Government of the Republic of Azerbaijan on mutual promotion and protection of investments**

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

Wishing to expand economic cooperation with mutual benefit for both States,

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

Recognizing the need to promote and protect foreign investment in order to contribute to the economic development 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 holding 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 any property, 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, stocks or any other type of participation in the companies of legal persons mentioned in point 1 b) of this Article,
- c) claims to money, or claims for other benefits having economic value,
- d) intellectual property rights such as copyrights, patents, utility models, industrial designs and models, trademarks, trade names, trade secrets, technology, 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 received from an investment, and in particular includes profits, interest on capital, dividends, royalties, fees or other current income,

5. The term "territory" means the corresponding territory of the Republic of Poland or the territory of the Republic of Azerbaijan, as defined in Polish or Azerbaijani legislation and international law.

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

1. This Agreement shall apply to investments in the territory of a State of one Contracting Party made in accordance with its laws by investors of the State of the other Contracting Party, whether made before or after the entry into force of this Agreement.

2. This Agreement shall not apply to investments made under interstate agreements within the framework of the former Council for Mutual Economic Assistance, as long as such commitments are transformed into investments in accordance with the applicable Contracting Parties' legislation on foreign investment.

### **Article 3. Encouragement and Admission of Investments**

1. Each Contracting Party shall encourage investment in the territory of its State of investors of the other Contracting Party and permit such investments in accordance with its laws and regulations.

2. If a Contracting Party has allowed an investment in the territory of its own State, that Party will grant, in accordance with its legislation and other legal regulations, the necessary licensing arrangements for technical, commercial or administrative assistance related to such investments. Each Contracting Party will, if necessary, make every effort to issue the necessary permits for investment activities to nationals of the State of the other Contracting Party.

### **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 other Contracting Party and shall not in any way undermine or prejudice the investor's right of the other Contracting Party to manage, maintain, gaining benefits, expanding business, selling and, if necessary, liquidating 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 favourable than that accorded by each Contracting Party to investments made in its territory by investors of the most favoured nation.

3. The most-favoured-nation clause will not apply to the privileges and benefits which any Contracting Party will grant to third-country investors on account of its membership or membership in a free trade zone, customs union, common market or another form of regional economic integration or under any agreement on the avoidance of double taxation or other tax matters.

### **Article 5. Transfer**

1. Each Contracting Party in the territory of which the investment has been made by investors of the State of the other Contracting Party shall grant to such investors, after payment of taxes, duties and dues, the free transfer of payments related to such investments, in particular:

- a) Interest, dividends, profits and other current income,
- b) Repayment of loans related to investments,
- c) Amounts intended to cover the cost of managing the investment,
- d) Investment claims and other payments arising from the rights referred to in Article 1 (2) (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 day 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 undertake, directly or indirectly, any expropriation, nationalisation or other action of the same nature or effect in respect of investments of investors of the other Contracting Party, unless these activities have been undertaken in the public interest and are not of a discriminatory nature, and have been taken in accordance with the proper

legal procedure, and also with effective and proper compensation. Such compensation will be equivalent to the market value of the expropriated investment immediately prior to expropriation or before the expropriation became publicly known (whichever is earlier) 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 paid in convertible currency, without undue delay, and will be freely transferable. 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 cannot exceed 3 months.

2. Investors of the State of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, riots, exceptional conditions 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 redress for losses incurred - in accordance with the provisions of paragraphs 1 and 2 of Article 4 of this Agreement.

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

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

## **Article 8. Subrogation**

1. If a Contracting Party or any of its agencies make 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 of its agencies which has taken over the investor's rights is entitled to the same rights as the investor and to pursue such rights to the same extent 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 it is 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 six months of the date of the dispute, the dispute shall be submitted to the arbitral tribunal of three members at the request of any Contracting Party. Each Contracting Party will designate one arbitrator, and the selected arbitrators will nominate a chairperson who will be a national of a non-member state maintaining 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 can not reach an agreement on the choice of chairperson within two months of their appointment, he or she will be appointed by the President of the International Court of Justice at the request of any of the Contracting Parties.

5. If, in the cases referred to in paragraphs 3 and 4 of this Article, the President of the International Court of Justice is unable to exercise the said function or if he is a national of one of the Contracting Parties, the appointment shall be made by the Vice-President of the International Court of Justice and if he is unable to exercise the said function and if he is a national of one of the Contracting Parties, the appointment shall be made by the member of the International Court of Justice next in seniority, who is not a national of either Contracting Party.

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

7. Each Contracting Party shall bear the costs of its own arbitrator and its participation in the arbitration proceedings; The costs of the chairman and the remaining costs shall equally cover the Contracting Parties.

8. The arbitral awards are final and binding on each of the Contracting Parties.

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

1. For the purpose of resolving disputes between a Contracting Party and an investor of the State of the other Contracting Party concerning an investment, without violating the provisions of this Agreement 9, consultations will be held between the parties concerned.
2. If consultation fails within six months from the date of the written proposal to start consultations, either Contracting Party may apply to an arbitral tribunal to resolve the dispute.
3. The arbitral tribunal will be established for each individual case. Unless the parties to 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 mentioned in paragraph 3 of this article are not respected, any of the parties to the dispute may, in the lack of other agreements, request the President of the Court of Arbitration at the International Chamber of Commerce in Paris to make the necessary appointments. If the President cannot perform the said function or is a citizen 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 arbitration panel shall determine its procedure. Decisions are final and binding. Each Contracting Party shall ensure the recognition and enforcement of arbitration awards.
6. Each party to the dispute shall bear the costs of its member of the arbitral 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.
7. A Contracting Party which is a party to a dispute may not, at any stage of the amicable settlement or enforcement of the judgment, rely on the fact that the investor has received, as a result of the insurance contract, compensation covering all or part of the claimed damage.
8. Where both Contracting Parties become parties to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, disputes shall be submitted to the International Center for Settlement of Investment Disputes.

## **Article 11. Final Provisions**

1. The Contracting Parties shall exchange notes on the fulfilment of the legal requirements provided for in the legislation of the State of each of the Contracting Parties with respect to the entry into force of this Agreement. The 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, twelve months before the end of the period of validity, of its 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.

Done at Warsaw on 26 August 1997, in two original copies, each in the Polish, Azerbaijani and Russian languages, all texts being equally authentic. In the event of any discrepancy in the interpretation of this Agreement, the Russian text shall prevail.

For the Government of the Republic of Poland

W. Kaczmarek

For the Government of the Republic of Azerbaijan

N. Nasrulajev