

## **AGREEMENT dated 2 October 1992**

# **BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF POLAND AND THE PROMOTION**

## **MUTUAL**

## **PROTECTION OF INVESTMENTS**

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

Referring to the creation of favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Considering that the promotion and reciprocal protection of such investment contributes to the development of mutually beneficial trade-economic and scientific and technical cooperation,

Have agreed as follows:

### **Article 1.**

In this Agreement:

1. The term "investor" means in respect of each of the Contracting Parties:

- a) natural persons who are nationals of the Contracting Party;
- b) legal entities established under the laws of that Contracting Party.

2. The term "investments" covers all kinds of assets that investors of one Contracting Party investing in the territory of the other Contracting Party in accordance with its legislation, and in particular:

Movable and immovable property (buildings, structures, equipment and other tangible assets) and related property rights;

Shares, stocks and other forms of participation;

Contractual rights to cash or services having an economic value;

Copyrights, inventions, industrial designs, trademarks or service marks, trade names, as well as technology and "know-how";

Right to engage in economic activities, conferred by law or contract, including, in particular, the right to exploration, development and exploitation of natural resources.

No change in the form in which the property values are invested does not affect their character as investments.

3. The term "returns" means amounts yielded by an investment in accordance with paragraph 2 of this Article, particularly as profits, dividends, interest, license fees, payments for technical assistance and maintenance and other fees.

### **Article 2.**

1. This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, if such investments are made after 15 October 1986.

2. This Agreement applies to the territory of each Contracting Party, as well as the economic zone and the continental shelf extending beyond the territorial waters of the State of each Contracting Party over which they exercise in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

### **Article 3.**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.
2. Each Contracting Party shall ensure, in accordance with its legislation full and unconditional legal protection to investments of investors of the other Contracting Party.

### **Article 4.**

1. Each Contracting Party shall ensure in its territory investments of investors of the other Contracting Party fair and equitable treatment, excludes the application of discriminatory measures that would impede the management and disposal of investments.
2. Treatment referred to in paragraph 1 of this article mode, must be at least favorable than that accorded to the investments of its own investors or investors of any third state.
3. Each Contracting Party reserves the right to determine the sectors and spheres of activity, which can be excluded or limited investments of foreign investors.
4. Most-favored-nation treatment granted in accordance with paragraph 2 of this Article shall not apply to the advantages which the Contracting Party is providing or will provide in the future:

In connection with participation in a free trade area, customs or economic union;

On the basis of agreements to avoid double taxation or other agreements on taxation.

### **Article 5.**

Investments of investors of either Contracting Party, carried out on the territory of the other Contracting Party may not be nationalized or subjected to measures equally on the consequences of nationalization (hereinafter referred to as "the nationalization"), except in cases where such measures are taken in the public interest, in the manner prescribed by law, are not discriminatory and are accompanied by the payment of prompt, adequate and effective compensation. Compensation should correspond to the real cost of the nationalized investment immediately before the date when it was officially known about the actual or impending nationalization. Compensation shall be paid without undue delay in a freely convertible currency and freely translated from the territory of one Contracting Party in the territory of the other Contracting Party. Until the payment of the amount of compensation shall bear interest in accordance with the interest rate of the Contracting Party in whose territory the investments were made.

### **Article 6.**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party after the payment of the relevant taxes and duties free transfer abroad of payments in connection with the investments, and in particular:
  - a) income as defined in paragraph 3 of Article 1 of this Agreement;
  - b) the amounts in repayment of loans, recognized by both Contracting Parties as investments;
  - c) the amounts received by the investor in connection with the partial or total liquidation or sale of investments;
  - d) the compensation provided for in Article 5 of this Agreement.
2. Transfers shall be made in freely convertible currency at the exchange rate ruling at the date of transfer and applied in accordance with the laws of the Contracting Party in whose territory the investments were made.

### **Article 7.**

Contracting Party in whose territory was damaged investments of investors of the other Contracting Party as a result of an armed conflict, a state of emergency or civil unrest, provides such investors in respect of the recovery of property, compensation and other settlement, treatment no less favorable than that, which it accords to its own investors or investors of any third state. The resulting payments shall be made without undue delay and freely transferable.

## **Article 8.**

If one of the Contracting Parties in accordance with its legislation or international agreements to which both Contracting Parties, provides investments of investors of the other Contracting Party treatment more favorable than that accorded by this Agreement, the more favorable treatment applies.

## **Article 9.**

1. If a Contracting Party makes a payment to its investor through a guarantee or insurance contract entered into in connection with the investment, the other Contracting Party shall recognize the transfer of the first Contracting Party of the rights belonging to the investor. Contracting Party to whom the rights of the investor has the same rights as an investor, with reservation in respect of investor commitments related to the insured so that investment.
2. In the case of subrogation provided for in paragraph 1 of this Article, the investor may not make a claim if he was not authorized by a Contracting Party.

## **Article 10.**

Disputes between a Contracting Party and an investor of the other Contracting Party arising in connection with the investments, including disputes over the size of the issues, conditions, or order the payment of compensation, as far as possible be settled by negotiation.

If the dispute is not resolved in this way within six months from the date of its occurrence, it can be passed on to the investor's choice:

The competent court or tribunal of the Contracting Party in whose territory the investments were made; or

Ad hoc arbitral tribunal in accordance with the Arbitration Rules of the International Trade Law of the United Nations Commission (UNCITRAL).

## **Article 11.**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled through diplomatic channels.
2. If the Contracting Parties have not resolved the dispute within twelve months from the date of its occurrence, then at the request of either Contracting Party a dispute is referred to an arbitration tribunal composed of three arbitrators. Each Contracting Party shall appoint one arbitrator, and the arbitrators appointed shall elect a chairman who shall be a citizen of a third State.
3. If one of the Contracting Parties has not appointed an arbitrator within two months following the request of the other Contracting Parties of such a designation, in this case, the latter Contracting Party may request the International Court of Justice President to make the necessary appointment.
4. If the two arbitrators have not agreed on the choice of the chairman of the arbitration tribunal within two months of their appointment, at the request of either Contracting Party shall appoint the chairman of International Court of Justice.
5. If, in the cases provided for in paragraphs 3 and 4 of this Article, the President of the International Court of Justice can not perform the said function or if he is a citizen of either Contracting Party, the appointment is made by the Vice-President of the International Court of Justice. If the Vice-President is unable to discharge the said function or if he is a citizen of either Contracting Party, the purpose of producing the most senior in rank of the International Court judge who is not a national of either Contracting Party.
6. Unless the Contracting Parties agree otherwise, the arbitral tribunal establishes its own rules of procedure; the court shall decide by a majority vote.
7. Each Contracting Party shall bear the costs of its member of the court activity, as well as its representation in the

arbitration proceedings; costs associated with the activities of the Chairman and other expenses The Contracting Parties shall bear in equal shares. The Court may, however, determine in its judgment that the Contracting Parties bear a larger share of the costs.

8. The decisions of the arbitral tribunal shall be final and binding on both Contracting Parties.

## **Article 12.**

At the suggestion of either Contracting Party may be consulted on matters relating to the interpretation or application of this Agreement.

## **Article 13.**

1. This Agreement shall enter into force on the thirtieth day after the written notice to the Contracting Parties to each other on their implementation of the necessary constitutional procedures.

2. This Agreement is concluded for a period of fifteen years. It shall be automatically extended for successive five-year periods, unless either Contracting Party notifies in writing the other Contracting Party at least twelve months prior to the expiry of the period of its intention to terminate this Agreement.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 - 12 of this Agreement shall remain in force for a further period of fifteen years from that date.

4. The Protocol to this Agreement forms an integral part.

Done in Warsaw on 2 October 1992 in two copies, each in the Russian and Polish languages, both texts being equally authentic.

PROTOCOL

TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE RUSSIAN

FEDERATION

AND THE GOVERNMENT OF THE REPUBLIC OF POLAND AND THE PROMOTION

MUTUAL

PROTECTION OF INVESTMENTS

In regard to paragraph 1 of Article 2 of the Agreement, the Contracting Parties acknowledge that:

1. The Agreement shall also apply to all investments made before 15 October 1986 at the basis of international agreements concluded within the framework of the former Council for Mutual Economic Assistance, a

Bilateral and multilateral, if such investments will be converted in accordance with the legislation on foreign investment of the Contracting Party in whose territory the investments were made. In this case, none of the Contracting Parties shall not prevent such a transformation.

2. The condition referred to in paragraph 1 of this Protocol, will not work if the host country legislation does not require the investment of such a transformation.