

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BULGARIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purposes of this Agreement:

1. The term "investments" shall mean any kind of assets and in particular:

- a) Property rights and any other real rights;
- b) Shares, stocks or other forms of participation in companies;
- c) Outstanding claims and any other rights having an economic value;
- d) Copyrights, rights in the field of industrial and intellectual property (such as patents, licences, industrial designs, trademarks and tradenames), technical processes, know- how and goodwill;
- e) Business concession conferred by law or under a contract or an administrative act of a competent state authority and in particular for exploration, processing, extraction or exploitation of natural resources;

The investments should be made in accordance with the laws and regulations in the territory of the respective Contracting Party.

No subsequent change in the form in which the investments have been made shall affect their substance as investments, provided that such a change does not contradict the laws of the relevant Contracting Party.

2. The term "returns" shall mean all amounts yielded by an investment such as profits, dividends, interest and other lawful income.

3. The term "investor" shall mean:

- a) Natural persons who are nationals of the Republic of Bulgaria or of the Republic of Poland in accordance with the laws of the respective State;
- b) Any company, firm, partnership, organisation or association with or without juridical personality, incorporated or constituted in accordance with the laws of the Republic of Bulgaria or of the Republic of Poland with a seat in the territory of the respective State;

4. The term "territory" means the territory under the sovereignty of the Republic of Bulgaria, on the one hand, and of the Republic of Poland, on the other hand, including the territorial sea, as well as the continental shelf and the exclusive

economic zone over which the respective State exercises sovereign rights or jurisdiction in conformity with international law.

Article 2.

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.
2. In case of reinvestment of returns from an investment, this reinvestment and their returns shall enjoy the same protection as the initial investments.
3. Each Contracting Party shall consider favourably and in compliance with its laws and regulations, questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of the members of their families forming part of their household.

Article 3.

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State.
2. The provisions of paragraph 1 of this Article shall not apply to any advantage accorded to investors of a third State by the other Contracting Party based on: paragraph 1 of this Article shall not apply to any advantage accorded to investors of a third State by the other Contracting Party based on:
 - a) Existing or future customs union, free trade area, economic community or similar international institutions or;
 - b) Agreements relating wholly or mainly to taxation.
3. Should national legislation of the Contracting Parties or present or future international agreements between the Republic of Poland and Republic of Bulgaria or other international agreements entered into by both Contracting Parties contain regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that is more favourable prevail over the present Agreement.

Article 4.

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, state of emergency or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State.

Article 5.

1. Investments of investors of either Contracting Party shall not be subjected to expropriation or nationalization in the territory of the other Contracting Party except by virtue of law, in the public interest, on a nondiscriminatory basis and against compensation.
2. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, and shall be paid without undue delay and shall carry an annual rate of interest equal to 12 months LIBOR quoted for the currency in which the investments were made or in other convertible currency until the time of payment. The payment of such compensation shall be freely transferable.

Article 6.

1. Each Contracting Party shall accord to the investors of the other Contracting Party, after the fulfilment of all tax obligations, the free transfer of payments in freely convertible currency relating to the investments, particularly of:
 - a) Capital and additional amounts intended to maintain or increase the investment;
 - b) Returns from the investment;

- c) Proceeds obtained from the sale or the total or partial liquidation of the investment;
 - d) The amounts required for payment of the expenses which arise from the operation of the investment, such as loan repayments or payment of patents or licence fees;
 - e) The compensation payable in accordance with Article 5;
 - f) The remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.
2. The transfers referred to in the preceding paragraph shall be made without undue delay, at the exchange rate applicable on the date of the transfer in the territory of the Contracting Party where the investment has been made.
3. In accordance with the legal regulations of either Contracting Party all transfers subject to this Article shall be accorded treatment no less favourable than that accorded to the transfers of investments made by an investor of any third State.

Article 7.

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the investor.

The Contracting Party or any agency thereof which is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

2. In the case of subrogation as defined in the paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof. paragraph 1 above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

Article 8.

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

2. Should the Contracting Parties fail to reach such a settlement within six months after entering into negotiations, the dispute 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. Those 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 two months from the date of appointment of the other two members.

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 any necessary appointments. If the President is a national of either Contracting party or if he is otherwise 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 shall reach its decision on the basis of the provisions of the present Agreement as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

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.

Article 9.

1. Disputes between an investor of one of the Contracting Parties and the other Contracting Party concerning an obligation

of the latter under this Agreement, in relation to an investment of the former, 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, the investor concerned may submit the dispute to the competent court of the Contracting Party.

3. In case of disputes with regard to Articles 5 and 6 of this Agreement the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to:

a) An ad — hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or, arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or,

b) The International Centre for Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 (ICSID Convention).

4. Concerning other Articles of this Agreement the investor shall be entitled to bring the matter before his own Contracting Party with a view to reaching a settlement according to Articles 8 and 10 of this Agreement.

5. The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

Article 10.

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the application or interpretation of the present Agreement. The other Contracting Party shall make the necessary steps for holding such consultations.

Article 11.

1. The present Agreement shall apply to investments, made by an investor of one Contracting Party in the territory of the other Contracting Party before the entry into force of the present Agreement.

2. The present Agreement shall not apply to investments made under intergovernmental agreements within the framework of the former Council for Mutual Economic Assistance, unless such investments are transformed according to foreign investment laws of the Contracting Parties.

Article 12.

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

Article 13.

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period or periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to terminate the 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 this Agreement become effective, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination of this Agreement.

In witness whereof the undersigned duly authorized thereto by their respective Governments, have signed this Agreement

Done at Warsaw on the day of 11. 04. 1994 in two copies, each in the Polish, Bulgarian and English languages, the three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA