

# Agreement between the Republic of Poland and the Swiss Confederation on the Reciprocal Promotion and Protection of Investments

The Swiss Confederation and the Polish People's Republic,

Desiring to intensify economic cooperation in the mutual interest of both States, hereinafter referred to as the contracting parties,

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

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both Contracting Parties,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) the term means investor in respect of either Contracting Party,

a) Natural persons having the nationality of that Contracting Party;

b) Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;

c) Legal entities established in accordance with the law of any country, which are directly or indirectly controlled by nationals of that Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party; it is understood that the control requires a significant portion of property.

(2) The term "investment" means all categories of assets and includes in particular, though not exclusively:

a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

b) The actions, and other forms of participation shares in companies;

c) Monetary claims and rights to any performance having an economic value;

d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin), know-how and goodwill;

e) The rights conferred by a public authority to perform an economic activity, including concessions, including extract concessions to search for or exploit natural resources.

(3) The term territory means the territory of a Contracting Party, including any area beyond the territorial sea which has been or may be designated under the laws of a Contracting Party, in accordance with international law as an area over which the contracting party may exercise sovereign rights or jurisdiction.

## Article 2. Scope

(1) This Agreement shall apply to investments made in the territory of a Contracting Party by investors of the other Contracting Party, whether these investments have been made after 26 May 1976 in accordance with the laws and

regulations of the former Contracting Party.

(2) This Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investment does not falling within its scope.

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

(1) Each Contracting Party shall encourage investments of investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations the necessary permits in connection with such investments and with the carrying out of licensing agreements, technical, commercial or administrative assistance. Contracting chaque-partie will grant, whenever necessary, the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

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

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale and, where appropriate, the liquidation of such investments.

(2) Each Contracting Party shall in its territory fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that granted by each contracting party to investments made in its territory by investors of the most favoured nation treatment, if the latter is more favourable. the joint ventures as entities shall enjoy the aforementioned treatment.

(3) The most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union or common market, Organisation for Mutual Economic Assistance.

### **Article 5. Transfer**

(1) Each Contracting Party in whose territory of investors of the other Contracting Party has made investments will accord to those investors the free transfer of payments related to these investments, including:

- a) The proceeds of the sale of or the partial or total liquidation of an investment, including the possibility of capital;
- b) Royalties arising from rights enumerated in article 1, paragraph (2), letter (d) of this Agreement;
- c) The amounts relating to loans for investment or other obligations;
- d) Profits, dividends, interests and other current income.

(2) The free transfer of the Swiss investments in the territory of the Republic of Poland's people is subject to the following conditions:

- a) Transfers of foreign currency Swiss will be made by investors from the account of the investor in foreign currency that transferring currency; where the foreign currency account is not satisfied for the transfer, the Republic of Poland people's permit, without prejudice to the provisions of paragraph 1 (b) of this paragraph, the conversion of Polish convertible currencies;
- b) As regards the cases referred to in subparagraphs (c) and (d) of paragraph (1) of this article, the conversion of Polish convertible currencies may, in accordance with the laws of the Republic of Poland, depend on specific arrangements between the investor and the competent authorities of the Republic of Poland's people; such arrangements should preferably be awarded at the time of approval of the investment;
- c) The terms of this subparagraph shall, after a period of five years following the entry into force of this Agreement and if a Contracting Party so requests, called into discussions with a view to their possible elimination;
- d) Investors of Switzerland shall in no case be less favourable treatment of investors of any third State.

(3) Unless the investor has accepted another arrangement, the transfers shall be made at the rate of exchange applicable on

the date of transfer in accordance with the legislation in force in the currency of the Contracting Party in whose territory the investment has been made.

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

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments belonging to investors of the other contracting party except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the amount of compensation shall be settled in the currency of the country of origin of the investment and shall be paid without undue delay to the person entitled thereto without regard to its residence or domicile. a transfer shall be deemed to have taken place without undue delay "" if it is effected within such period as a normally required for the completion of formalities transfer. the said period shall commence on the day on which the relevant request has been submitted and shall not exceed three months.

(2) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, riot revolt, state of emergency or other similar events that took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with article 4, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other relevant counterpart.

(3) Investors referred to in article 1, subparagraph (1) (c) of this agreement cannot issue a claim based on paragraph (1) or (2) of this article if compensation has been paid pursuant to a similar provision of another investment protection agreement concluded by the Contracting Party in whose territory the investment has been made.

## **Article 7. More Favourable Terms**

The provisions of the laws of each Contracting Party which would put the investor in a more favourable treatment than that provided for by this Agreement shall prevail to the terms of the latter.

## **Article 8. Subrogation**

If one of the Contracting Parties has granted any financial guarantee against non-commercial risks with regard to an investment made by an investor in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor if payment has been made under this first guaranteed by the contracting party. the other contracting party is entitled to exercise the public and other taxes due and payable by the investor.

## **Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party**

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other contracting party and without prejudice to the provisions of article 10 of this Agreement, consultations will take place between the parties concerned.

(2) If these consultations do not solution within six months from the date of the written request to enter into consultations the parties to the dispute may proceed as follows:

a) A dispute concerning an obligation under articles 5 and 6 of this Agreement shall, at the request of the investor, be submitted to an arbitral tribunal.

b) In the event of a dispute which does not refer subparagraph (2) (a) of this article and if both parties agree, the dispute shall be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case. unless the parties to the dispute decide otherwise, each party shall appoint one arbitrator and these two arbitrators shall nominate a Chairman who shall be a national of a third State. the arbitrators shall be appointed within two months from the receipt of the request to submit the dispute to arbitration and the Chairman shall be appointed within two months.

(4) If the periods specified in paragraph (3) of this article have not been observed, each Party to the dispute may, in the absence of any other agreement, invite the Chairman of the arbitral tribunal of the International Chamber of Commerce in Paris to make the necessary appointments. if the President is unable to perform this function or if he is a national of either Contracting Party, the provisions of paragraph (5) of article 10 of this Agreement shall apply mutatis mutandis.

(5) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure. the decisions shall be final and binding. each Contracting Party shall ensure the recognition and enforcement of the arbitral award.

(6) Each Party to the dispute shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both parties to the dispute. the Tribunal may decide, however, in its award by one of the Parties to the dispute shall bear the costs differently and this decision shall be binding on both parties.

(7) The Contracting Party which is a party to the dispute may, at any stage of the proceedings Regulation or the enforcement of the award, assert the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(8) If both parties are contracting parties to the Convention of 18 March 1965 for the Settlement of Investment Disputes between States and Nationals of Other States, the dispute shall be submitted to the International Centre for Settlement of Investment Disputes as follows: disputes mentioned in subparagraph (2) (a) of this article, at the request of the investor, and disputes mentioned in subparagraph (2) (b) of this Article, with the agreement of both Parties.<sup>1</sup> for the Settlement of Investment Disputes between States and Nationals of Other States, the dispute shall be submitted to the International Centre for Settlement of Investment Disputes as follows: disputes mentioned in subparagraph (2) (a) of this article, at the request of the investor, and disputes mentioned in subparagraph (2) (b) of this Article, with the consent of both parties.

## **Article 10. Disputes between Contracting Parties**

(1) Disputes between contracting parties regarding the interpretation and application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State through diplomatic relations with both contracting parties.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure. the tribunal shall reach its decisions by a majority of votes.

(7) The decisions of the Tribunal are final and binding on the contracting parties.

(8) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties. the Tribunal may, however, decide that one of the two Contracting Parties shall bear a higher proportion of costs and this decision shall be binding on both contracting parties.

## **Article 11. Compliance**

Each Contracting Party shall respect the obligations assumed by it in respect of investments of investors of the other contracting party.

## **Article 12. Final Provisions**

(1) This Agreement shall enter into force on the day on which the two Contracting Parties shall have notified each other that the legal requirements for the conclusion and entry into force of international agreements have been completed; it shall

remain valid for a period of ten years. if it is not denounced in writing six months before the expiry of this period, there shall be considered on the same terms as renewed for a period of five (5) years and so on.

(2) In the event of termination, the provisions of articles 1 to 11 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.

Done, in duplicate at Berne, on November 8, 1989, in Polish, French and English, each text being equally authentic. In case of divergency, the English text shall prevail.