

AGREEMENT BETWEEN THE GOVERNMENT OF MONGOLIA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND concerning THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Mongolia and The Government of the Republic of Poland (hereinafter referred to as "the Contracting Parties") bearing in mind the friendly and cooperative relations existing between the two States and their peoples,

Intending to encourage and create favourable conditions for investments by investors of one State in the territory of the other State, on the basis of equality and mutual benefit,

Recognizing that the encouragement and reciprocal protection of investments, on the basis of this Agreement, shall stimulate the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" shall mean every kind of asset, and in particular though not exclusively includes:

- (a) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) Shares, stocks and debentures of companies or interests in the property of such companies;
- (c) Claims to money or to any performance under contract having an economic value;
- (d) Industrial and intellectual property rights, including rights with respect to copyrights, patents, trade marks, trade-names, industrial designs, trade secrets, technical processes and know-how and goodwill;
- (e) Business concessions of economic value necessary for conducting economic activities, conferred by law or under contract, including concessions to search for, cultivate, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment.

2. The term "returns" shall mean the amount yielded by an investment, and in particular, though not exclusively, shall include profits, interest, dividends royalties, fees or other current incomes;

3. The term "investor" shall mean with respect to either Contracting Party,

- (a) Natural persons having the nationality of the Contracting Party in accordance with its laws;
- (b) Any companies, firms, organizations and associations incorporated or constituted in accordance with the laws of that Contracting Party provided that the natural persons, companies, firms, organizations and associations are competent in accordance with the laws of that Contracting Party to make investment in the territory of the other Contracting Party.

4. The term "territory" shall mean:

- (a) With respect to Mongolia, the territory over which Mongolia has sovereignty or jurisdiction;
- (b) With respect to the Republic of Poland, the territory of the Republic of Poland within its international recognized borders, including any area beyond the territorial waters of the Republic of Poland which, in accordance with international law and the laws of the Republic of Poland, is an area within which the rights of the Republic of Poland with respect to the sea-bed and sub-soil and their natural resources may be exercised.

5. The term "freely convertible currency" shall mean the currency that is widely used to make payments for international transactions and widely traded in the international exchange markets.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments, in accordance with its laws and regulations.

2. Investments made by investors of one Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than that accorded to the investments and returns of the investors of the latter Contracting Party or of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to investors of any third State.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffered losses owing to war or armed conflict, state of emergency or other similar events shall, as regards compensations or other forms of settlement, be accorded by the latter Contracting Party treatment not less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State. Any payment made under this Article shall be freely transferable.

Article 5. Expropriation

1. Investments made by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedure 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 become public knowledge and shall include interest from the date of expropriation and be freely transferable. Compensation shall be effective, adequate and be paid out without undue delay.

3. The investor whose investment was expropriated shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other appropriate authority of that Contracting Party of his case and of valuation of his investment in accordance with the principles set out in this Article.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory and in which investors of the other Contracting Party own shares, the provision of paragraph 1 of this Article shall be applied.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Parties shall guarantee to investors of the other Contracting Party, in respect of the investment, the transfer in freely convertible currency of:

(a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income accruing from any investment by an investor of the other Contracting Party;

(b) The proceeds accruing from the sale or from the total or partial liquidation of any investment made by an investor of the other Contracting Party;

(c) Funds in repayment of borrowings;

(d) An adequate portion of the earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory;

(e) Amounts spent for the management of the investment in the territory of the other Contracting Party; and

(f) Additional funds necessary for the maintenance of the investment.

2. Transfer of proceeds mentioned in paragraph 1 of this Article may be effected under the condition that the transferred convertible currency originates in the investment or in its returns.

3. Each Contracting Party shall take, after fulfillment of the legal obligations pertaining to the investors, the necessary steps in order to ensure the execution without delay of the transfers mentioned in paragraph 1 of this Article.

4. For the purpose of this Agreement, exchange rate shall be the rate applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made.

Article 7. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) Any existing or future customs union or free trade area or common external tariff area or monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party;

(b) Any international agreement or domestic legislation relating wholly or mainly to taxation.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes a payment to the benefit of its own investor under an indemnity given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from the investor to the former Contracting Party or its designated agency; and

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claim of such an investor.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

3. If the former Contracting Party acquires amounts in the lawful currency under this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between either Contracting Party and the investor of the other Contracting Party, including expropriation or nationalisation of an investment shall as far as possible be settled by the disputing Parties in an amicable way.

2. The legal remedies under the laws and regulations of one Contracting Party in the territory of which the investment has been made are available for the investor of the other Contracting Party on the basis of treatment no less favourable than that accorded to investments of its own investor or investors of any third State, whichever is more favourable to the investor.

3. If any dispute cannot be settled within six (6) months from the date either Party requested amicable settlement, it shall, upon request of either an investor or the Contracting Party, be submitted to the International Centre for the Settlement of Investment Disputes established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States. The dispute shall be submitted to conciliation or arbitration procedure to be

mutually agreed upon on the basis of the Washington Convention.

4. Nothing in this Article shall be construed as to prevent the parties to the dispute from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled after six (6) months, it shall upon request of either Contracting Party, be submitted to an Arbitral Tribunal.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way:

Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The appointed members shall then select a citizen of a third State, who on the approval of the two Contracting Parties shall be appointed as the Chairman of the Tribunal.

The Chairman shall be appointed within two (2) months from the date of appointment of the other 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 other agreements, invite the President of the International Court of Justice to make the appointments. If the President is a citizen of either Contracting Party or if he otherwise is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The Tribunal shall determine its own procedure.

Article 11. Application of the Agreement

The Agreement shall apply to all investments made after its entry into force.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the latter date on which either Contracting Parties notifies the other that its internal legal requirements for the entry into force have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and continue in force thereafter unless either Contracting Party notifies in writing six (6) months in advance of its intention to terminate the Agreement.

3. This Agreement may be revised by mutual consent.

Any revision or termination of this Agreement shall be effected without prejudice to any right or obligation accruing or incurred under this Agreement prior to the effective date of such revision or termination.

4. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

IN WITNESS WHEREOF, the undersigned duly authorized thereto by their respective Governments, have signed this

Agreement_

DONE in duplicate at Warsaw this 8th day of November 1995, in the Mongolian, Polish and English languages, all texts being equally authentic. In case of divergencies in interpretation the English text shall prevail.

For the Government of Mongolia

For the Government of the Republic of Poland