

# **Agreement between the Government of the Polish People's Republic and the Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg on the promotion and mutual protection of investments**

The Government of the People's Republic of Poland, on the one hand, and the Government of the Kingdom of Belgium and the Government of the Grand Duchy of Luxembourg, on the other hand,

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other contracting party,

Recognizing the positive impact that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment,

Have agreed as follows:

## **Article 1.**

1. The term investment means every asset and any direct or indirect contribution in companies or joint ventures in any sector of the economy, including but not limited to:

- a) Movable and immovable property as well as any other rights in rem;
- b) The actions and other forms of participation in companies;
- c) Claims and rights to any performance having an economic value;
- d) Copyrights, trademarks, patents, technical processes, trade names and any other rights of industrial property, and goodwill.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their character as investments " within the meaning of this Agreement.

2. The term investor means:

- a) Any natural person who is a citizen of the Republic of Poland, the Kingdom of Belgium or the Grand Duchy of Luxembourg;
- b) Any legal person constituted under the laws of the Republic of Poland, or beige Luxemburg and having its registered office in the territory of the Republic of Poland, the Kingdom of Belgium or the Grand Duchy of Luxembourg respectively.

## **Article 2.**

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 legislation.

2. This Agreement shall apply to investments made in the territory of each of the Contracting Parties with investors of the other contracting party from 1 July 1986.er July 1986.

3. This agreement does not extend to the privileges granted by either contracting party to any third country under an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## **Article 3.**

1. Each Contracting Party undertakes to provide in its territory for investments by investors of the other contracting party fair and equitable treatment excluding any unjustified or discriminatory measure which could adversely affect their management, maintenance, use, enjoyment or disposal.
2. Subject to the measures necessary for the maintenance of public order, shall enjoy such investments a constant protection and security, which shall be at least equal to those enjoyed by investors of the most favoured nation.
3. However, the treatment and protection referred to in paragraphs 1 and 2 does not extend to the privileges which either Contracting Party shall accord to investors of a third State by virtue of its participation in an economic union or association, a customs union or common market, a free trade area, a regional economic organization or an international organization for Mutual Economic Assistance.

#### **Article 4.**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or subjected to any other measures of direct or indirect dispossession having a similar effect unless the following conditions are met:

- a) The measures are taken in the public interest and under due process;
- b) They are neither discriminatory nor contrary to a specific engagement as referred to in article 7 (2);
- c) They are accompanied by provisions for the payment of compensation in the amount shall correspond to the real value of the affected investments immediately before the date on which the measures taken or are publicly available. the compensation shall be paid to investors in convertible currency and paid without delay and freely transferable.

2. Investors of either Contracting Party whose investments suffer damage to a war or any other armed conflict, a state of emergency, national or riot occurring in the territory of the other Contracting Party, shall be accorded by the latter in a non-discriminatory manner and not less than that accorded to the investors of the most favoured nation treatment, as regards compensation, restitution, compensation or other remedies. Compensation payable pursuant to this paragraph shall be paid in accordance with the provisions of paragraph 1.c).

#### **Article 5.**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of funds related to investment and in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) The amounts required for the repayment of loans;
- c) Fees or other charges;
- d) Profits, dividends, interests and other current income;
- e) The product, including possible, capital gains from the total or partial liquidation of the investment;
- f) The compensation pursuant to article 4, article 4.

2. The transfers referred to in paragraph 1 shall be made in the currency of the investment or any other convertible currency agreed to by the investor and the Contracting Party in whose territory the investment has been made.

3. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the State in whose territory the investment has been made.

4. The guarantees provided for in paragraphs 1, 2 and 3 shall be at least equal to those accorded to investors of the most favoured nation in similar situations.

#### **Article 6.**

1. If under a legal or contractual guarantee covering non commercial investment risks, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the Rights of the investor indemnified, within the limits of the proportion of risk actually covered by the Guarantee and paid to the investor.

2. In accordance with the guarantee given to the investment concerned, the insurer valoirtous shall be entitled to make the rights that the investor might exercise if the insurer had not been subrogated. Such subrogation shall be subject to the payment of taxes and charges imposed by law to the investor.

3. Any dispute between one Contracting Party and the insurer of an investor of the other Contracting Party shall be settled in accordance with the provisions of article 9 of this accord.article 9 of this Agreement.

## **Article 7.**

1. If the legislation of either contracting party entitles to investors of the other contracting party to a more favourable treatment than that provided for by this Agreement, such investor may invoke the treatment of their choice.

2. Investors of one Contracting Party may conclude with the other contracting party of the specific commitments which cannot be contrary to this Agreement.

Investments made under such specific commitments are, moreover, governed by this Agreement.

## **Article 8.**

1. Disputes concerning the interpretation or application of this Agreement shall be the subject of a written notification made at the initiative of the most diligent and shall be settled as far as possible between the Parties through diplomatic channels.

2. In the absence of a settlement through diplomatic channels, a Contracting Party may submit the dispute, six months after the notification referred to in paragraph 1, to an arbitration tribunal on an ad hoc basis.

3. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitration tribunal.

4 If the periods specified in paragraph 3 have not been observed, the Secretary-General of the United Nations or the President of the International Court of Justice shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the recognized rules and principles of International Law.

6. The tribunal shall determine its own rules of procedure.

7. The tribunal shall reach its decisions by a majority of the votes; they shall be final and binding on the contracting parties.

8. Each Contracting Party shall bear the costs of its own arbitrator in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in egales shares by the contracting parties.

## **Article 9.**

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, shall be the subject of a written notification accompanied by an aide-memoire detailed addressed by an investor of one of the Contracting Parties to the other contracting party. To the extent possible, the dispute shall be settled amicably between the parties.

2. If the dispute cannot be settled within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted, at the investor, choixde arbitration to one of the following bodies designated: (1), it shall be submitted, at the investor, choixde to arbitration with one of the bodies designated as follows:

a) The Arbitration Institute of the Stockholm Chamber of Commerce;

b) The International Centre for Settlement of Investment Disputes (c.i.r.d.i.), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, on 18 March 1965, when each State Party to this agreement would be a member of the Commission;

c) An ad hoc arbitral tribunal established in accordance with the rules of the United Nations Conference on International Trade Law (UNCITRAL) and the Economic Commission for Europe of the United Nations and the competent authority for the appointment of the arbitrators shall, at the choice of the investor, the Secretary-General of the United Nations or the President of the International Court of Justice.

3. If the arbitration proceedings shall be submitted at the initiative of one Contracting Party, the investor concerned to express his choice that has the arbitration body must be seized of the dispute.

In the event that the investor did not express within one month from the date of receipt of that request, the Contracting Party shall submit its request for arbitration with the body of his choice.

4. Neither of the Contracting Party, Party to the dispute, can raise objection, at any stage of the arbitration proceedings or enforcement of an arbitration award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy or to the guarantee provided for in article 6.

5. The arbitral tribunal shall decide on the basis of:

- The national law of the Contracting Party involved in the dispute in whose territory the investment is located, including its rules on the Conflict of Laws;
- The provisions of this Agreement;
- In terms of the specific commitments in respect of the investment;
- The rules and principles of International Law recognized.

## **Article 10.**

1. This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their instruments of ratification.

It shall remain in force for a period of ten years, unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity. Each time it shall be automatically renewed for a further period of ten years, each contracting party reserving the right to terminate the agreement by a notification made at least twelve months before the date of expiry of the current period of validity.

2. Investments made prior to the termination of this Agreement shall continue to apply for a period of ten years from the date of its termination.

Done at Warsaw on 19 May 1987, in three originals in Dutch, French, Polish, all texts being equally authentic.

For the Government of the People's Republic of Poland

For the Government of the Kingdom of Belgium

For the Government of the Grand Duchy of Luxembourg