

AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF THE REPUBLIC OF POLAND FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Poland and the Government of the State of Israel,

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party,

And,

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both states,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1 . The term "investments" shall comprise any kind of assets including, but not limited to:

- a) Movable and immovable property, as well as any other rights in rem, in respect of every kind of asset;
- b) Rights derived from shares, bonds and other kinds of interests in companies;
- c) Claims to money, goodwill and other assets and to any performance having an economic value;
- d) Rights in the field of intellectual property, technical processes and know-how.

2 . The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made after the 26th day of May 1976.

3 . The term "investor" shall comprise:

- a) Physical persons having the status of nationals or permanent residents of the Contracting Party concerned under the law in force in that Contracting Party, who are not also nationals of the other Contracting Party; or
- b) Companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Contracting Party concerned, which are not directly or indirectly controlled by investors of the other Contracting Party.

4 . The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profit, interest, capital gains, royalties or fees.

5 . The term "territory" shall mean with respect to each Contracting Party, the territory of that Contracting Party.

6 . The term "Contracting Party" shall mean the Government of the State of Israel or the Government of the Republic of Poland, as the context may require.

Article 2. Promotion and Protection of Investment

1 . Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such

investments.

2 . Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. Most Favored Nation Treatment

1 . Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third state.

2 . Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third state.

Article 4. Compensation for Losses

1 . Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payments shall be freely transferable.

2 . Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party, resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 5. Expropriation

1 . Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest as provided by law until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

2 . Where a Contracting Party expropriates the assets of a company, within the meaning of Article 1 (3), which is incorporated or constituted under the law in force in its territory and in which investors of the other Contracting Party own shares, or other ownership rights, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation, in respect of their investment to such investors of the other Contracting Party who are owners of those shares or other ownership rights.

Article 6. Repatriation of Investment and Returns

1 . Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2 . In respect of the Republic of Poland:

(a) The transfer of funds as referred to in paragraph 1 of this Article, including capital invested and returns, exceeding the amount transferable under the provisions of Article 19, of the Law of 23rd of December 1988 on Economic Activity with the Participation of Foreign Parties as Amended on the 28th of December 1989 (15 percent of profits as of April 1, 1991) shall be made according to the following schedule:

As of 1st January 1991

15 percent of the remaining funds in 1990 and not previously transferred

As of 1st January 1992

20 percent of the remaining funds in 1990-1991 and not previously transferred

As of 1st January 1993

35 percent of the remaining funds in 1990-1992 and not previously transferred

As of 1st January 1994

50 percent of the remaining funds in 1990-1993 and not previously transferred

As of 1st January 1995

80 percent of the remaining funds in 1990-1994 and not previously transferred

As of 1st January 1996

100 percent of the remaining funds in 1990-1995 and not previously transferred and 100 percent of funds thereafter.

(b) The Government of the Republic of Poland shall ensure that the opportunity exists to invest funds which cannot be transferred in accordance with paragraph 2 of this Article in a bank account that yields a positive real rate of interest.

(c) If the Republic of Poland introduces full convertibility in respect of the foreign investments before 1st January 1996, transfers of funds shall be made without restrictions from the date of introduction of such convertibility.

3. In respect of the State of Israel: the provisions of this Article shall not, for the time being, apply to the following categories of investments:

(a) All types of deposits in New Israel Sheqels held in Israeli banks including saving accounts and pension funds of all maturities.

(b) Bonds in New Israeli Sheqels and options issued or guaranteed by the Government of Israel or by Israeli banks as well as investment in mutual funds which invest in these kinds of bonds. Bank shares which are eligible for redemption by the Government of Israel as a result of the Bank shares arrangement of 1983 are also included in this category.

(c) Investments in partnerships with an Israeli resident or in unincorporated firms.

Article 7. Exceptions

The provision of this Agreement relative to the grant of treatment not less favorable 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 the benefit of any treatment, preference or privilege resulting from:

1 . any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

2 . membership in, or association with a free trade area, customs union, common market or organization for mutual economic assistance.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor

1 . In the event that the Republic of Poland becomes a party to the 1965 Convention on the Settlement of Investment

Disputes between States and Nationals of other States, any dispute may be submitted to the International Center for the Settlement of Investment Disputes for resolution, as follows: 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States, any dispute may be submitted to the International Center for the Settlement of Investment Disputes for resolution, as follows:

(a) Each Contracting Party hereby consents to submit to the International Center for the Settlement of Investment Disputes ("the Center") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former.

(b) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which, before such a dispute arises, the majority of shares are owned by nationals or companies of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party.

(c) If any such dispute should arise and cannot be resolved, amicably or otherwise, within three months from written notification of the existence of the dispute, then the investor affected may institute conciliation or arbitration proceedings by addressing a request to that effect to the Secretary-General of the Center, as provided in Article 28 or 36 respectively of the Convention. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received, in pursuance of an insurance contract, an indemnity in respect of some or all of his or its losses.

(d) Neither Contracting Party shall pursue, through the diplomatic channel, any dispute referred to the Center, unless:

(1) The Secretary-General of the Center or a conciliation commission or an arbitral tribunal constituted by it decides that the dispute is not within the jurisdiction of the Center; or

(2) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

2 . Until such time as the Republic of Poland becomes a member of the Center, any dispute arising between one Contracting Party and an investor of the other Contracting Party which cannot be settled, amicably or otherwise, within three (3) months from written notification of a claim, shall be submitted, upon request, to an ad hoc arbitral tribunal. The tribunal shall be constituted pursuant to and shall operate in accordance with the guidelines set out in Article 9 [paragraphs (3)–(5)]. Notwithstanding the provisions of Article 9(5), costs of the tribunal shall be borne equally between the investor and the Contracting Party.

3 . All arbitral awards shall be final and binding on the parties to the dispute.

4 . All sums received as a result of a settlement shall be freely transferable.

Article 9. Disputes between the Contracting Parties

1 . Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2 . If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, it 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 two months of 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, provided that State maintains diplomatic relations with both Contracting Parties 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 Chamber of Commerce in Paris to make any necessary appointments. If the President is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function, the Member of the Chamber of Commerce next in seniority shall be invited to make the necessary 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 10. Subrogation

1 . If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

(a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2 . The first Contracting Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the rights and claims acquired by it, by virtue of the assignment; and

(b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive by virtue of this Agreement, in respect of the investment concerned and its related returns.

3 . Any payments received in non-convertible currency by the first Contracting Party, in pursuance of the rights and claims acquired, shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement.

Article 12. Entry Into Force

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

Article 13. Duration and Termination

This Agreement shall remain in force for a period of 10 years. Thereafter, it shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 20 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Jerusalem this 22 day of May 1991, which corresponds to the 9 day of Sivan 5751, in the English, Hebrew and Polish languages, all three texts being equally authentic.

In case of diversions of interpretations, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND

FOR THE GOVERNMENT OF THE STATE OF ISRAEL