

AGREEMENT

BETWEEN

THE REPUBLIC OF ESTONIA

AND

THE REPUBLIC OF POLAND

ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Estonia and the Republic of Poland, 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 economic prosperity of both Contracting Parties;

Have agreed as follows:

Text provided by the Ministry of Foreign Affairs, Estonia.

Article 1

Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

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

b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

c) legal entities established under 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 being understood that control requires substantial part in the ownership.

(2) The term "investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that they have been made in accordance with the laws and regulations of the other Contracting Party and shall include in particular though not exclusively:

a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

b) shares, parts or any other kinds of participation in companies;

c) claims to money or to any performance having an economic value;

d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

e) rights granted by a public authority in accordance with law to carry out an economic activity, including concessions, for example, to search for, extract or exploit natural resources.

(3) Any change in the legal form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.

(4) If an investment is made by an investor through an entity covered by paragraph 1 (c) of this Article, in which he holds an equity participation, such investor shall enjoy the benefits of this Agreement to the extent of such indirect equity participation, provided, however, that such an investor shall not enjoy the benefits of this Agreement if the investor invokes the dispute settlement mechanism under another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

(5) The term "returns" means all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees or other current income;

(6) The term "territory" means the territory of the Republic of Estonia or the territory of the Republic of Poland respectively, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea of either of the above territories, over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploitation and exploration of natural resources of such areas.

Article 2

Promotion and Admission of Investments

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

(2) When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons irrespective of nationality and in connection with such an investment.

Article 3

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 impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

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

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in or association with a free trade area, customs union, common market or to an existing or future convention on the avoidance of double taxation or a convention on other fiscal matters.

Article 4

Expropriation and Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or an equivalent effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation and be freely transferable.

The amount of compensation shall be settled in a freely convertible currency and paid without undue delay to the investor entitled thereto without regard to its residence or domicile. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

(2) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall, whenever possible, be transferable without delay.

(3) Investors referred to in Article 1, paragraph (1), letter c) may not raise a claim based on paragraph (1) or (2) of this Article if compensation has been paid pursuant to a similar provision in another investment protection agreement concluded by the Contracting Party in the territory of which the investment has been made.

Article 5

Transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors a free transfer of the payments relating to these investments, particularly of:

- a) the capital and additional sums necessary for the maintenance and development of the investment;
- b) returns, as defined in Article 1 (5) of this Agreement;
- c) funds in repayment of loans regularly contracted and documented and directly related to a specific investment;
- d) the proceeds from a total or partial liquidation or sale of an investment;
- e) compensations provided for in Article 4 of this Agreement;
- f) the earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Parties.

(2) Transfers shall be effected without undue delay in a freely convertible currency at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not imply a rejection, a suspension or denaturalization of such transfer.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraphs (1) and (2) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 6

Subrogation

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee 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 such insured investment.

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

(3) The Contracting Parties undertake to accord to transfers referred to in paragraphs (1) and (2) of this Article a treatment no less favourable than that accorded to transfers originating from investment made by investors of any third State.

Article 7

Settlement of Disputes between a Contracting Party and an Investor of the Other Contracting Party

(1) Disputes between a Contracting Party and an investor of the other Contracting Party shall be notified in writing, including a detailed information, by the investor to the host Contracting Party of the investment. Parties to a dispute, where possible, shall endeavour to settle these differences by means of a friendly agreement.

(2) If such a dispute cannot be settled amicably within six months from the date of the written notification mentioned in paragraph (1) the dispute shall be submitted, at the choice of the investor to:

- a competent court of the Contracting Party concerned;
- a court of arbitration in accordance with the Rules of Procedure of the Arbitration Institute of the Stockholm Chamber of Commerce;
- the court of arbitration of the Paris International Chamber of Commerce;
- the *ad hoc* court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law; or
- the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", in case both Contracting Parties have become signatories of this Convention.

(3) The arbitration shall be based on:

- the provisions of this Agreement;
- the national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;
- the rules and the universally accepted principles of international law.

(4) During arbitration or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(5) The arbitration decisions shall be final and binding for the Parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 8

Settlement of 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 cannot reach an agreement within six months after the beginning of the dispute, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State, which maintains 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 that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both 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 carrying out the said function 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, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

(7) The arbitration tribunal shall decide on the basis of respect for international law including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the generally acknowledged rules and principles of international law.

(8) The decisions of the tribunal are final and binding for each Contracting Party.

(9) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide 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.

Article 9

More Favourable Provisions

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

Article 10

Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 11

Application

This Agreement shall also apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party before or after its entry into force, but shall not apply to any dispute concerning an investment which arose or any claim concerning an investment which was made before its entry into force.

Article 12

Entry into Force

This Agreement shall enter into force on day when both Contracting Parties have notified each other that their internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 13

Duration and Termination

(1) This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force thereafter for a similar period or periods unless, one year before the expiry 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 becomes 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.

Done at *Warsaw*, on *6th of May 1993*, in duplicate in the English language.

In witness whereof the respective plenipotentiaries have signed this Agreement.

For the
Republic of Estonia

Triinu Kallast

For the
Republic of Poland

Krzysztof Skubikiewicz