

POLAND



Treaty Series No. 26 (1988)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Polish People's Republic

for the Promotion and Reciprocal Protection
of Investments

London, 8 December 1987

[The Agreement entered into force on 14 April 1988]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1988*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
AND
THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC
FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Polish People's Republic,

Desiring to create favourable conditions for greater investment by investors of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative and will contribute to the development of economic relations between the two States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "investment" means every kind of asset connected with economic activities which has been acquired on or after 26 May 1976 and in particular, though not exclusively, includes:
 - (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
 - (ii) shares in and stock and debentures of a company and any other form of participation in a company;
 - (iii) claims to money or to any performance under contract having a financial value;
 - (iv) intellectual property rights and goodwill;
 - (v) business arrangements established by law or under contract;
- (b) the rights and obligations of both Contracting Parties with respect to investments made before 26 May 1976 shall be in no way affected by the provisions of this Agreement;
- (c) a change in the form in which assets are invested does not affect their character as investments;
- (d) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;
- (e) "investor" shall comprise with regard to either Contracting Party:
 - (i) natural persons having the nationality of that Contracting Party;
 - (ii) any corporations, firms, organisations and associations incorporated or constituted under the law in force in that Contracting Party or in any territory to which this Agreement is extended in accordance with the provisions of Article 11;
- (f) "territory" means:
 - (i) in respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 11;
 - (ii) in respect of the Polish People's Republic: the territory of the Polish People's Republic;
- (g) "Contracting Party" means the United Kingdom of Great Britain and Northern Ireland, or the Polish People's Republic, as the context requires.

ARTICLE 2

Promotion and Protection of Investment

- (1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.
- (2) Investments of investors of each 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. 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. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 3

National Treatment and Most-favoured-nation Provisions

- (1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable 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 favourable than that which it accords to its own investors or 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 suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot 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 favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be immediately and freely transferable.

ARTICLE 5

Expropriation

- (1) Investments of investors of either 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 which is not discriminatory and against prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, and shall be paid within three months of the expropriation, be effectively realizable and be freely transferable. The investor 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 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 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, 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.

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 to the country where they reside of their investments made and returns yielded in convertible currency, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer of a minimum of 20 per cent a year is guaranteed.

(2) Transfers of currency 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 of the Contracting Party in whose territory the investment was made.

(3) In respect of the Polish People's Republic, transfers of convertible currency by investors of the United Kingdom under paragraphs (1) and (2) above shall be made from the foreign exchange account of the investor transferring the currency. Where that foreign exchange account does not have sufficient foreign exchange for the transfer, the Polish People's Republic shall permit the conversion of Polish currency into convertible currency for transfer in the following cases:

- (a) proceeds resulting from the total or partial liquidation of an investment;
- (b) royalties derived from assets mentioned in Article 1 (a) (iv);
- (c) payments made pursuant to a loan agreement in connection with any investment by investors of the United Kingdom in the territory of the Polish People's Republic; and
- (d) profits, interest, capital gains, dividends, fees and any other form of return of an investor, where the competent authorities of the Polish People's Republic have in their discretion specifically granted permission.

ARTICLE 7

Exceptions

The provisions in this Agreement relative to the grant 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 resulting from

- (a) any existing or future customs union, organisation for mutual economic assistance or similar international agreement to which either of the Contracting Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 8

Settlement of Disputes between an Investor and a Host State

(1) Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under Article 5 of this Agreement in relation to an investment of the former which have not been amicably settled shall after a period of three months from written notification of a claim be submitted to international arbitration if either party to the dispute so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

- (a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965¹ in the event that the Polish People's Republic becomes a party to this Convention, and the Additional Facility for the Administration of conciliation, Arbitration and Fact-Finding Proceedings); or
- (b) an international arbitrator or *ad hoc* arbitral tribunal:
 - (i) by an agreement between the parties to the dispute; or
 - (ii) to be established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim there is no agreement to an alternative procedure, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

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.

(2) If a dispute between the Contracting Parties cannot thus be settled, 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 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 Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too 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 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 makes a payment under an indemnity given in respect of an investment on the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting

¹ Treaty Series No. 25 (1967), Cmdd 3255.

Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified to the extent that the party was indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and 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.

ARTICLE 11

Territorial Extension

At the time of signature of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 12

Entry into Force

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty days after the date of the second notification¹.

ARTICLE 13

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen 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 authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 8th day of December 1987 in the English and the Polish languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the Polish
People's Republic:

GEOFFREY HOWE

M. ORZECOWSKI

¹ The Agreement entered into force on 14 April 1988.