

A G R E E M E N T

between the Polish People's Republic

and

the Swiss Confederation

on the Reciprocal Promotion and Protection

of Investments

Preamble

The Polish People's Republic and the Swiss Confederation

Desiring to intensify economic cooperation to the mutual benefit of both States, hereinafter referred to as the Contracting Parties,

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 the economic prosperity of both Contracting Parties,

Have agreed as follows:

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 a substantial part in the ownership.
- (2) The term "investments" means any kind of assets and in particular, though not exclusively, includes:
 - 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 to carry out an economic activity, including concessions, for example, to search for, extract or exploit natural resources.
- (3) The term "territory" means the territory of a Contracting Party including any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of a Contracting Party as area over which a Contracting Party may exercise sovereign rights or jurisdiction.

Article 2

Scope of application

- (1) The present Agreement shall apply to investments in the territory of one Contracting Party by investors of the other Contracting Party, if the investments have been made later than 26 May 1976 in accordance with the laws and regulations of the former Contracting Party.
- (2) The present Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments that are not within the scope of the Agreement.

Article 3

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 of foreign nationality.

Article 4

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. As for joint ventures they shall enjoy the aforementioned treatment as entity.
- (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 organization for mutual economic assistance.

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 the free transfer of the payments relating to these investments, particularly of:
 - a) the proceeds from the sale or from the partial or total liquidation of the investment, including possible capital appreciation;
 - b) royalties deriving from rights enumerated in Article 1, paragraph (2), letter d) of this Agreement;

- c) amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;
- d) interest, dividends, profits and other current returns.

(2) The free transfer relating to Swiss investments in the territory of the Polish People's Republic shall be subject to the following modalities:

- a) transfers of foreign currency by Swiss investors 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, without prejudice to the provision of letter b) of this paragraph, permit the conversion of Polish currency into convertible currency;
- b) as for cases mentioned under letters c) and d) of paragraph (1) of this Article, the conversion of Polish currency into convertible currency may, in accordance with Polish legislation, depend on specific arrangements between the investor and the competent authorities of the Polish People's Republic; such arrangements should preferably be made at the time of the approval of the investment;
- c) the modalities of this paragraph shall, after a period of five years following the date of the entry into force of this Agreement and upon request of either Contracting Party, be discussed with a view to their possible deletion;

- d) in no case shall Swiss investors be treated less favourable than investors of any third State.
- (3) 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.

Article 6

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. The amount of compensation shall be settled in the currency of the country of origin of the investment and paid without undue delay to the person 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) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolts, riots, state of emergency or similar events, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other valuable consideration.
- (3) Investors referred to in Article 1, paragraph (1) letter c) of this Agreement 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 7

More favourable provisions

If provisions contained in the legislation of either Contracting Party entitle the investor to a treatment more favourable than is provided by the present Agreement, those provisions shall prevail over the terms set forth by this Agreement.

Article 8

Subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by an investor in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

Article 9

Disputes between a Contracting Party and an investor
of the other Contracting Party

- (1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within six months from the written request to enter into consultations, the parties to the dispute may proceed as follows:
 - a) A dispute concerning an obligation under Article 5 and Article 6 of this Agreement shall upon request of the investor be submitted to an arbitral tribunal.

- b) In the event of a dispute not referred to in paragraph (2) letter a) of this Article the dispute shall be submitted upon agreement on such submission by both parties to an arbitral tribunal.
- (3) The arbitral tribunal shall be constituted for each individual case. Unless the parties to the dispute have agreed otherwise each of them shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be national of a third State. The arbitrators are to be appointed within two months of the receipt of the request for arbitration and the chairman is to be nominated within further two months.
- (4) If the periods specified in paragraph (3) of this Article have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the President is prevented from carrying out the said function or if he is a national of a Contracting Party the provisions in paragraph (5) of Article 10 of this Agreement shall be applied mutatis mutandis.
- (5) Unless the parties to the dispute have agreed otherwise, the tribunal shall determine its procedure. Its decisions are final and binding. Each Contracting Party shall ensure the recognition and execution of the arbitral judgement.
- (6) Each party to the dispute 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 the remaining cost shall be borne in equal parts

by both parties to the dispute. The tribunal may, however, in its award decide on a different proportion of costs to be borne by one of the parties and this award shall be binding on both parties.

- (7) The Contracting Party which is party to the dispute can, at no time whatever during the settlement procedure or the execution of the sentence, alledge the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.
- (8) In the event of both Contracting Parties having become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes shall be submitted to the International Center for Settlement of Investment Disputes as follows: disputes referred to in paragraph (2), letter a) of this Article upon request of the investor, and disputes referred to in paragraph (2), letter b) of this Article upon agreement of both parties.

Article 10

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 twelve months after the beginning of the dispute between themselves, 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 decisions of the tribunal are final and binding for each Contracting Party.
- (8) 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 the 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 11

Observance of commitments

Each Contracting Party shall observe any commitment it may have entered into with regard to investments of investors of the other Contracting Party.

Article 12

Final Provisions

- (1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that they have complied with the legal requirements for the conclusion and entry into force

of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.

- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done, in duplicate at Berne, on November 8, 1989, in Polish, French and English, each text being equally authentic. In case of divergency, the English text shall prevail.

For the Polish
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For the Swiss
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Franz Blankhart