

No. 30492

—

**ESTONIA
and
POLAND**

**Agreement on the reciprocal promotion and protection of
investments. Signed at Warsaw on 6 May 1993**

Authentic text: English.

Registered by Estonia on 17 November 1993.

—————

**ESTONIE
et
POLOGNE**

**Accord relatif à l'encouragement et à la protection récipro-
ques des investissements. Signé à Varsovie le 6 mai 1993**

Texte authentique : anglais.

Enregistré par l'Estonie le 17 novembre 1993.

AGREEMENT¹ 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:

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.

¹ Came into force on 6 August 1993, the date on which the Contracting Parties notified each other of the completion of their internal legal requirements, in accordance with article 12.

(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;