No. 27615

FRANCE
and
POLAND

Agreement concerning the mutual promotion and protection of investments (with exchange of letters). Signed at Paris on 14 February 1989

Authentic texts: French and Polish.

Registered by France on 30 October 1990.

FRANCE
et
POLOGNE

Accord sur l'encouragement et la protection réciproques des investissements (avec échange de lettres). Signé à Paris le 14 février 1989

Textes authentiques : français et polonais.

Enregistré par la France le 30 octobre 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC CONCERNING THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Polish People's Republic, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Poland and Polish investments in France,

Convinced that the promotion and protection of such investments are likely to stimulate transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1

For the purposes of this Agreement:

1. The term "investment" shall mean assets such as property, rights and interests of any kind related to an economic activity in any sector, in accordance with the legislation of the Contracting Party in whose territory or maritime areas the investment has been made, and more particularly, but not exclusively to:

(*a*) Movable and immovable property and all other real rights such as mortgages, preferences, usufructs, sureties and similar rights;

(*b*) Shares, issue premiums and other forms of participation, even minority or indirect, in companies constituted in the territory of either Party;

(*c*) Bonds, claims and rights to any benefit having an economic value;

(*d*) Copyrights, industrial property rights (such as patents for inventions, licences, registered trademarks, industrial models and designs), technical processes, registered trade names and goodwill,

it being understood that the said assets related to an economic activity must be or must have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime areas the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the State in whose territory or maritime areas the investment is made.

2. The term "investor" shall mean:

(*a*) Any individual having the nationality of either Contracting Party;

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[1] Came into force on 10 February 1990, i.e., one month after the date of receipt of the last of the notifications (of 9 January 1990) by which the Parties had informed each other of the completion of their respective internal procedures, in accordance with article 12.

(*b*) Any corporate body constituted in the territory of either Contracting Party in accordance with the legislation of that Party and having its registered office there.

3. The term "income" shall mean all the amounts yielded by an investment, such as profits, royalties or interest, during a given period.

Income from an investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment itself.

4. The term "maritime areas" shall mean those marine and submarine areas over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2

Each Contracting Party shall permit and promote, in accordance with its legislation and with the provisions of this Agreement, investments made in its territory and maritime areas by investors of the other Party.

Article 3

Each Contracting Party undertakes to accord, in its territory and maritime areas, fair and equitable treatment to the investments of investors of the other Party, any unjustified or discriminatory measure which might hamper their management, maintenance, use, enjoyment or liquidation being prohibited.

Article 4

1. Each Contracting Party shall accord in its territory and maritime areas to investors of the other Party, in respect of their investments and activities connected with such investments, the same treatment as is accorded to its own investors or the treatment accorded to investors of the most favoured nation if the latter is more advantageous.

2. Such treatment shall not, however, include privileges which a Contracting Party extends to the investors of a third State by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional organization or organization for mutual economic assistance.

3. This Agreement shall not include privileges extended by a Contracting Party to any third State by virtue of an agreement for the avoidance of double taxation or any other agreement with respect to taxes.

Article 5

1. Investments made by investors of one Contracting Party shall be fully and completely protected and safeguarded in the territory and maritime areas of the other Contracting Party.

2. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which would have the effect of divesting investors of the other Party, either directly or indirectly, of investments belonging to them in its territory or maritime areas, except for reasons of public necessity and on condition that these measures are not discriminatory or contrary to a specific undertaking.

Any divestment measures that may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which shall correspond to the real value of the investments in question on the day before the measures are taken or made known to the public.

Such compensation, its amount and its method of payment shall be determined no later than the date of divestment. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated on the basis of the appropriate rate of interest in force at the time of divestment.

3. Investors of either Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or uprising in the territory or maritime areas of the other Contracting Party shall be accorded by the latter Party treatment no less favourable than that accorded to its own investors or to investors of the most favoured nation. They shall in any event receive adequate compensation.

Article 6

1. A Contracting Party in whose territory or maritime areas investments have been made by investors of the other Contracting Party shall allow those investors to transfer freely:

(*a*) Interest, dividends, profits and other current income;

(*b*) Royalties deriving from intangible property, in particular that listed in article 1, subparagraph 1 (*d*);

(*c*) Payments made towards the repayment of duly contracted loans;

(*d*) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation of the invested capital;

(*e*) The compensation for divestment or loss provided for in article 5, paragraphs 2 and 3, above.

2. Nationals of each Contracting Party who have been authorized to work in the territory or maritime areas of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate proportion of their remuneration determined in accordance with the legislation of the latter Party.

3. The transfers referred to in the preceding paragraphs shall be made without delay at the normal exchange rate officially applicable on the date of transfer.

Article 7

1. If the regulations of one Contracting Party provide for a guarantee for investments made outside the country, such guarantee may be granted, on the basis of a case-by-case review, for investments made by investors of that Party in the territory or maritime areas of the other Party.

2. The guarantee referred to in the preceding paragraph shall not be available for investments by investors of one Contracting Party in the territory or maritime areas of the other Party unless the investments have been granted prior approval by the latter Party.