

AGREEMENT between The Government of The Republic of Bulgaria and The Government of The State of Israel for the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Bulgaria and the Government of the State of Israel, each hereinafter referred to as a "Contracting Party, "

Desiring to intensify economic cooperation to the mutual benefit of both countries,

Intending to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party,
and,

Recognizing that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative in both states.

have agreed as follows:

Article 1 Definitions

For the purposes of the present Agreement:

1. The term "investments" shall comprise any kind of assets, provided that they shall be implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, and shall include in particular but not exclusively the following:

- a) movable and immovable property, as well as any other rights in rem;
- b) rights derived from shares, bonds and other kinds of interests in companies;
- c) claims to money and other assets and to any performance having an economic value;
- d) rights in the field of intellectual and industrial property, technical processes, know-how and goodwill;
- e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

3. The term "investor" shall comprise:

With respect to investments made in the State of Israel:

- a) natural persons who are nationals of the Republic of Bulgaria who are not also nationals or permanent residents of the State of Israel; or
- b) companies including corporations, firms or associations incorporated or constituted in accordance with the law of the Republic of Bulgaria, which are not directly or indirectly controlled by nationals or permanent residents of the State of Israel.

With respect to investments made in the Republic of Bulgaria:

- a) a natural person who is a national of the State of Israel with a permanent residence outside the territory of the Republic of Bulgaria; or
- b) a legal person, or a company without legal personality, registered in the State of Israel.

The term "returns" shall comprise the amount yielded by an investment and shall include in particular but not exclusively: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

The term "territory" shall mean with respect to each Contracting Party, the territory of that Contracting Party including the territorial sea, as well as the continental shelf and the exclusive economic zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

Article 2 Promotion and Protection of Investment

Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such investments.

Investments made by investors of each Contracting Party shall 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, subject to and in accordance with its laws and regulations and the procedures and practice thereunder, consider favorably questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in this Agreement and of the members of their families forming part of their household.

Article 3

Most Favored Nation and National Treatment

Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third state.

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 favorable 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, including requisitioning or destruction of their property by its forces of authorities, owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other such similar activity 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 favorable than that which the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payments shall be freely transferable.

Article 5

Expropriation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (herein- after: "expropriation") in the territory of the other Contracting Party, except by virtue of law, for a public purpose of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest as provided for by the legislation of that Contracting Party until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investors 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 Contracting 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.

Article 6

Repatriation of Investment and Returns

1. Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party all the rights and benefits regarding the unrestricted transfer of their investments and returns which were in force on the day the current investment was implemented; provided, however, that the investor has complied with all his fiscal obligations and has fulfilled all the requirements of the exchange regulations. Transfers 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.

2. In the event the exchange regulations of one Contracting Party are modified, that Contracting Party guarantees that no such modifications shall adversely affect the position of an investment which has already been admitted into the territory of that Contracting Party.

Article 7

Exceptions

The provision of this Agreement relative to the grant of treatment not less favorable 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 the benefit of any treatment, preference or privilege resulting from:

(a) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(b) any existing or future customs union, free trade area agreement or similar international agreement to which either Contracting Party is or may become a party.

Article 8

Reference to International Centre for Settlement of Investment Disputes

1. Disputes between an investor of one Contracting party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall as far as possible, be settled by the parties in an amicable way.

2. If such a dispute related to Articles 4, 5, 6 and 11 cannot be settled amicably or otherwise within three (3) months from the date of written notification of the existence of the dispute, then the investor concerned may submit the dispute for settlement by arbitration to:

(a) The International Centre for the Settlement of Investment Disputes, in the event the Republic of Bulgaria becomes a party to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18 1965;

(b) To an ad hoc arbitral tribunal which shall be constituted pursuant to, and shall operate in accordance with, the guidelines set out in Article 9 [paragraphs (3)- (5)].

3. All arbitral awards shall be final and binding on the parties to the dispute.

4. All sums received as a result of a settlement shall be freely transferable.

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, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, 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 Chamber of Commerce in Paris (hereinafter: the "ICC") to make any necessary appointments. If the President is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function, the Member of the ICC next in seniority 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 shall determine its own procedure.

Article 10

Subrogation

1. If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter: the "Second Contracting Party"), the Second Contracting Party shall recognize:

(a) the assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and

(b) that the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and

(b) 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

Application of Other Rules

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

Investors of one Contracting Party may conclude with the other Contracting Party specific agreements, the provisions and effect of which, unless more beneficial to the investor shall not be at variance with this Agreement. Each Contracting Party shall, with regard to investments of investors of the other Contracting Party, observe the provisions of these specific agreements, as well as the provisions of this Agreement.

Article 12

Application to Investments

The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made on or after June 1 1985.

Article 13

Entry into Force

Each Contracting Party shall notify the other Contracting Party of the completion of the ratification procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

Article 14

Duration and Termination

This Agreement shall remain in force for a period of 10 years, or twelve months before the expiration of the 10 year period neither Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement, then this Agreement shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 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 authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Jerusalem this 6th day of December 1993, which corresponds to the 22nd day of Kislev 5754 Israelian calendar

Protocol

At the time of signing the Agreement between the Government of the Republic of Bulgaria and the Government of the State of Israel for the Promotion and Reciprocal Protection of Investments, the undersigned, duly authorized by their respective governments, have in addition agreed upon the following provisions with respect to Article 3:

1. The Government of the Republic of Bulgaria shall confer, on investors of the State of Israel and their investments, treatment no less favorable than that which it accords to its own investors and their investments, except as otherwise provided by its laws.

2. The Government of the State of Israel declares that, with respect to the provisions of Article 6, it shall confer, on investors of the Republic of Bulgaria and their investments, treatment no less favorable than that which it accords to investors of any third state and their investments resulting from Agreements entered into as of January 1, 1992;

This Protocol shall be an integral part of the Agreement between the Government of the Republic of Bulgaria and the Government of the State of Israel for the Promotion and Reciprocal Protection of Investments.

Done in duplicate at Jerusalem this 6th day of December 1993, which corresponds to the 22nd day of Kislev 5754 Israelian calendar.