

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE REPUBLIC OF POLAND ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Poland and the Government of the Republic of Finland, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of investments favour the expansion of economic relations between the two Contracting Parties and stimulate business initiatives,

Desiring to further develop the Agreement on the Promotion and Reciprocal Protection of Investments between the two Contracting Parties, done at Helsinki on 5 April, 1990,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investment" means any kind of asset, established or acquired by an investor from one Contracting Party in the territory of the other Contracting Party (host Party) in accordance with the laws and regulations of the host Party, and includes particularly, though not exclusively:

- a) Movable and immovable property and reinvested returns as well as property rights like mortgagees, liens, pledges and leases;
- b) Shares and other participation in enterprises;
- c) Loans, claims to money or rights to performances having an economic value;
- d) Intellectual and industrial property rights, such as patents, copyrights, industrial designs, business names, know-how and goodwill;
- e) Rights or permits 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 does not affect their character as an investment.

3. The term "returns" means the amounts yielded by an investment, including profits, interest, capital gains, dividends, royalties or other current income.

4. The term "investor" means:

- a) Any natural person who is a national of either Contracting Party in accordance with its laws and regulations; or
- b) Any legal person such as an enterprise or other organisation constituted in accordance with the laws and regulations of the Contracting Party and having its seat in the territory of the same Contracting Party.

5. The term "territory" means the land area, continental shelf and territorial sea, including seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Investments by investors of one Contracting Party shall at all times enjoy full protection and security in the territory of the host Party. The host party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party.

Article 3. Treatment of Investments

1. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment no less favourable than that which the Contracting Party accords to investments of its own investors or to investments made by investors of any third state.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, fair and equitable treatment which in no case shall be less favourable than that which it accords to its own investors or investors of any third state.

3. The treatment under this Article does not apply to privileges which a Contracting Party accords to investors of a third state by virtue of its participation in a free trade zone, an economic or customs union, a common market, a multilateral treaty on investments or any form of regional economic organisation or an international arrangement relating to taxation.

Article 4. Expropriation

1. Investments by investors of one Contracting Party in the territory of the host Party shall not be nationalised, expropriated or subjected to measures having the same effect, unless the measures are taken in the public interest, under due process of law and against prompt, effective and adequate compensation.

2. Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the date of expropriation or before the impending measures of expropriation became public knowledge, whichever is earlier.

3. The fair market value shall be calculated in a freely convertible currency at the market rate of exchange at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at the London Interbank Offered Rate (Libor) from the date of expropriation until the date of payment. paragraph 2 of this Article. Compensation shall also include interest at the London Interbank Offered Rate (Libor) from the date of expropriation until the date of payment.

Article 5. Compensation for Losses

An investor of the Contracting Party whose investments suffer losses in the territory of the host Party owing to war, armed conflict, civil disturbance or similar events, shall be accorded by the host Party treatment, as regards restitution, indemnification, compensation or other settlement, which is the most favourable of that which the host Party accords to an investor of any third state.

Article 6. Transfer of Payments

1. The host Party shall allow, with respect to investments under this Agreement, the unrestricted transfer of payments in connection with investments into and out of its territory. The free transfer shall include inter alia:

- a) The initial capital and additional capital to maintain or increase an investment,
- b) The proceeds from the partial or total liquidation of an investment,
- c) Profits, interest, dividends or other current income,
- d) Funds pursuant to repayments of a loan agreement,
- e) Royalties and other fees,
- f) Earnings of personnel engaged from abroad to work in connection with an investment,
- g) Payments arising out of the settlement of an investment dispute,

h) Compensation under Articles 4 and 5 of this Agreement. Articles 4 and 5 of this Agreement.

2. Transfers under paragraph 1 of this Article shall be effected without delay and in a freely convertible currency at the prevailing market rate of exchange on the date of transfer. paragraph 1 of this Article shall be effected without delay and in a freely convertible currency at the prevailing market rate of exchange on the date of transfer.

Article 7. Subrogation

Where the Contracting Party or its designated agency (guarantor) makes a payment under a guarantee it has accorded in respect non commercial risks of an investment in the territory of the host Party, the host Party shall recognize the assignment to the guarantor of all the rights and claims resulting from such an investment, and shall recognize that the guarantor is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

Article 8. Disputes between an Investor and the Host Party

1. Any dispute between the host Party and an investor of the other Contracting Party relating to an investment under this Agreement should be settled amicably.

2. If such a dispute has not thus been settled within three months from the date at which either party to the dispute requested amicable settlement, the investor may submit the dispute to definitive settlement under the rules established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March, 1965. Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March, 1965.

3. If the rules referred to in paragraph 2 of this Article should not apply, the dispute can be submitted to an arbitration tribunal to be constituted for each individual case under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). paragraph 2 of this Article should not apply, the dispute can be submitted to an arbitration tribunal to be constituted for each individual case under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The settlement under this Article shall be final and executed in accordance with the national law.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should be settled amicably.

2. If such a dispute has not thus been settled within six months from the date at which amicable settlement was requested, it shall upon request of either Contracting Party be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be constituted for each individual case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State to be appointed by the Contracting Parties to their Chairman. The members shall be appointed within two months and the Chairman within four months from the date of the written notice containing the request under paragraph 2 of this Article. paragraph 2 of this Article.

4. If the time limits referred to in paragraph three of this Article have not been complied with, either Contracting Party may invite the President of the International Court of Justice to make necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging this task, the appointments shall be made by the Vice - President of the International Court of Justice. If the Vice - President is a national of either Contracting Party or he/she 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. paragraph three of this Article have not been complied with, either Contracting Party may invite the President of the International Court of Justice to make necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging this task, the appointments shall be made by the Vice - President of the International Court of Justice. If the Vice - President is a national of either Contracting Party or he/she 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 arbitration tribunal shall determine its own procedures and take its decisions by a majority of votes. Each Contracting Party shall bear the cost of its own member and its own representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless the tribunal decides

otherwise. The decisions and awards of the arbitration tribunal shall be final and binding on both Contracting Parties.

Article 10. Application of the Agreement

1. This Agreement substitutes the Agreement between the Government of the Republic of Poland and the Government of the Republic of Finland on the Promotion and Reciprocal Protection of Investments, done at Helsinki on 5 April, 1990.

2. This Agreement shall in no way restrict the rights and benefits which an investor of the other Contracting Party in addition to the present Agreement enjoys under national or international law in the territory of the host Party.

3. This Agreement shall apply to all investments, whether made before or after its entry into force.

Article 11. Final Clauses

1. This Agreement shall enter into force on the thirtieth day after the day on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in written notifies the other Contracting Party of its decision to terminate this Agreement.

3. In respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of twenty years from that date. Articles 1 to 10 shall remain in force for a further period of twenty years from that date.

FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND

FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND