

# Agreement between the Government of the Republic of Azerbaijan and the Government of the Republic of Finland on the Promotion and Protection of Investments

The Government of the Republic of Azerbaijan 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,

RECOGNISING that the promotion and protection of investments on the basis of this Agreement will stimulate business initiatives,

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purpose of this Agreement:

1. The term "Investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including, in particular, though not exclusively:

(a) Movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;

(b) Shares, stocks, debentures or other form of participation in a company;

(c) Titles or claims to money or rights to performance having an economic value;

(d) Intellectual property rights, such as patents, copyrights, technical processes, trade marks, industrial designs, business names, know-how and goodwill; and

(e) Concessions conferred by law, by administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested does not affect their character as investments. 2. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment.

Returns shall enjoy the same treatment as the original investment. 3. The term "Investor" means:

(a) Any natural person who is a national of either Contracting Party in accordance with its laws; or

(b) Any legal person such as company, corporation, firm, business association, institution or other entity constituted in accordance with the laws and regulations of the Contracting Party and having its seat within the territory of that Contracting Party.

4. The term "Territory" means in respect to:

(a) The Republic of Azerbaijan, the territory of the Republic of Azerbaijan, including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises, in accordance with its national law and international law, sovereign rights or jurisdiction,

(b) Republic of Finland, the territory, internal waters and territorial sea over which the Republic of Finland exercises, in

accordance with its national law and international law, sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments by investors of the other Contracting Party and in exercise of powers conferred by its laws shall admit such investments.
2. Each Contracting Party shall at all times accord in its territory to investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.
3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its territory of investors of the other Contracting Party.
4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.
5. Each Contracting Party shall, within the framework of its legislation, give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory, including authorisations for engaging executives, managers, specialists and technical personnel of the investor's choice.

## **Article 3. Transparency**

Each Contracting Party shall ensure that, its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements after their entry into force, which may affect the investments of investors of the other Contracting Party in its territory, are promptly published, or otherwise made publicly available.

## **Article 4. Treatment of Investments**

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the most favourable to the investor.
2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the most favourable to the investor.

## **Article 5. Exceptions**

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

- (a) Any existing or future free trade area, customs union, common market or regional labour market agreement to which one of the Contracting Parties is or may become a party,
- (b) Any international agreement or arrangement relating wholly or mainly to taxation, or any domestic legislation relating to taxation, or
- (c) Any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.

## **Article 6. Expropriation**

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures having the effect, either directly or indirectly, equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before

the expropriation was taken or became public knowledge, whichever is earlier.

3. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

4. The investor whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

## **Article 7. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot 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 favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable to the investor. Resulting payments shall be effectively realisable, freely convertible and immediately transferable.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

(a) Requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or

(b) Destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation,

shall be accorded prompt, adequate and effective restitution or compensation.

## **Article 8. Free Transfer**

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of payments in connection with an investment. Such payments shall include in particular, though not exclusively:

(a) The principal and additional amounts to maintain, develop or increase the investment;

(b) Returns;

(c) Proceeds obtained from the total or partial sale or disposal of an investment;

(d) The amounts required for payment of expenses which arise from the operation of the investment, such as payment of royalties and licence fees or other similar expenses;

(e) Compensation payable pursuant to Articles 6 and 7;

(f) Payments in respect of management fees;

(g) Payments arising out of the settlement of a dispute;

(h) Payments in connection with contracts, including loan agreements;

(i) Net earnings and other remuneration of personnel engaged from abroad working in connection with an investment.

2. Transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer in the currency to be transferred. If a market rate is unavailable the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay a transfer through the equitable, non-discriminatory and good faith application of measures ensuring investors' compliance with the host Contracting Party's laws and regulations relating to the payment of taxes and dues, provided that such measures and their application shall not unreasonably impair the free and undelayed transfer ensured by this Agreement.

## **Article 9. Subrogation**

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

## **Article 10. Consultations**

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

## **Article 11. Disputes between an Investor and a Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the latter Contracting Party shall, if possible, be settled amicably.

2. If the dispute cannot be settled amicably within three months from the date of request for amicable settlement, the investor concerned may submit the dispute to international arbitration. The investor has the choice of submitting the case either to:

(a) The competent courts of the Contracting Party in whose territory the investment is made;

(b) The International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available, or

(c) The Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Convention set out in subparagraph (b) of this Article, or

(d) An ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Contracting Parties give their irrevocable consent in respect of the fact, that all disputes relating to investments are submitted to the above mentioned court, tribunal or alternative arbitration procedures. 3. An investor who has already submitted the dispute to the competent courts of the Contracting Party shall no more have recourse to one of the arbitral tribunals mentioned in paragraph 2 of this Article.

4. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

5. Such award shall be final and binding for the parties to the dispute and shall be executed according to national law.

## **Article 12. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at 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 (2) 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 four (4) 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 Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise 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 or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as other common costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

### **Article 13. 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 this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

### **Article 14. Application of the Agreement**

This Agreement shall apply to investments existing at the time of entry into force of this Agreement as well as to those established or acquired thereafter, but shall not apply to disputes concerning an investment, which arose before its entry into force.

### **Article 15. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other when the internal procedures necessary for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.
2. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 14 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done at.....on.....200... in two originals in the Azerbaijani, Finnish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Azerbaijan

For the Government of the Republic of Finland