

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

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

The need to protect the other Contracting Party Party investors in the territory of a non-discriminatory;

DESIRING to promote greater economic cooperation between the Contracting Parties with respect to investments by the contractor nationals and companies of the other Contracting Party;

RECOGNIZING that the treaty on the treatment of such investments promotes private capital transfers and the economic development of the Parties;

HEREBY HEREBY RECOGNIZE that a stable framework for investment promotes the efficient use of financial resources and improves the standard of living;

RECOGNIZING that the development of economic links and business links can contribute to respect for internationally recognized rights in the labor market;

HEREBY HEREBY RECOGNIZE that these objectives can be achieved without mitigating requirements relating to generally applicable health, safety and environmental measures; and

Have decided to enter into an agreement on the promotion and protection of investment;

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purposes of this Agreement,

1. The term "investment" means any kind of assets established or acquired by the investor of one Contracting Party and the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party, including in particular, though not exclusively:

a) movable and immovable property or any property rights such as mortgage, property liens, guarantees, leasing, usufruct and similar rights law;

b) shares, stock and debentures of the company or any other form of participation in a company;

c) claims to money or to meet the obligations that have economic value.

d) intellectual property rights such as patents, copyrights, trademarks, design of industrial facilities, commercial (corporate) names, as well as technical processes, know-how and goodwill;

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

Investments made in the territory of a Contracting Party by any legal entity of the same Contracting Party but actually owned or controlled, directly or indirectly, investors of the other Contracting Party also considered investments of investors of the latter Contracting Party if they have been completed under the legislation of the former the two Contracting Parties.

Any change in the form in which assets are invested or reinvested does not affect the nature of the investment.

2. The term "returns" means the amounts obtained legally as a result of investment and includes in particular, though not exclusively, profits, dividends, interest, royalties, income from the rising cost of capital, or any payment related to investments.

Reinvested profits are exactly the same mode as the initial investment.

3. The term "investor" for any Contracting Party means those of investment decision makers of investment property in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party and conditions of this Agreement:

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

b) any legal entity such as company, corporation, firm, partnership, business association, institution or organization, incorporated or constituted under the law of the Contracting Party and has its official registered office under the jurisdiction of the Contracting Party, whether for profit or non-profit, limited or full legal personality.

4. The term "territory" means the territory, internal waters and territorial sea of the Contracting Party and the airspace above them, as well as the exclusive economic zone and continental shelf, which extends beyond the territorial waters of the State of either Contracting Party, over which the Contracting Party under international law exercises sovereign rights for the purpose of exploration and exploitation of their natural resources.

## **Article 2. Promotion and Reciprocal Protection 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. Each Party shall in its territory to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment, full and constant protection and security.

3. No Contracting Party shall not use excessive or arbitrary measures on acquiring, zoom, operation, management, maintenance, use, maintenance and sale or other rights of disposal of investments of investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

1. Each Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than that it accords to its own investors and their investments in respect of the acquisition, increase, operation, management, maintenance, use, use, sale or other disposal investments.

2. Each Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than treatment it accords to investors of a third State and their investments on the establishment, acquisition, increase, operation, management, maintenance, use, use, sale or other disposal of investments.

3. Each Party shall accord to investors of the other Contracting Party and to their investments treatment referred to in paragraphs 1 and 2 of this Article, depending on which one is more favorable.

4. No Contracting Party imposes on its territory compulsory 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 arbitrary nature.

## **Article 4. Exceptions**

The provisions of this Agreement shall be construed so as to oblige one Contracting Party to provide investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege under any existing or future:

a) free trade areas, customs unions, common markets, economic and monetary union or other similar agreements on regional economic integration, including agreement on regional labor markets, which is or may be involved either Contracting Party, or

b) agreements on avoidance of double taxation or other international agreements that are wholly or partly relating to taxation;

c) multilateral agreements completely or partially related to investments.

## **Article 5. Expropriation**

1. Investments and returns of investors of the Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation, nationalization or any other measures, direct or indirect, having effect equivalent to expropriation or nationalization (hereinafter - "expropriation") except for public interest without discrimination, in accordance with due process of providing immediate, adequate and effective compensation.

2. Such compensation shall amount to the value of the expropriated investment at the time immediately before exercise or for future publication expropriation depending on which of the events happening before. The cost will be determined in accordance with generally accepted principles of valuation taking into account, inter alia, the capital invested, replacement value, increased cost, current returns, the projected flow of future profits, goodwill and other relevant factors.

3. Compensation shall be fully accessible and should be paid without any restriction or delay. It shall include interest at a commercial rate established on a market basis for the currency of payment (eg LIBOR) from the date of deprivation of ownership of the expropriated property until the date of actual payment.

4. The Contracting Parties confirm that, in the case where a Contracting Party expropriates the assets or the assets of a company incorporated or established under applicable in that State legislation and whose shares have investors of the other Contracting Party or when the object of expropriation is a joint venture based in the territory of the Contracting Party which accepts ensures full recognition of statutory documents and other relevant documents involved in the possible companies or joint ventures, existing at the time of expropriation.

5. Without prejudice to the provisions of Article 9 of the Agreement, the investor whose investments expropriated is entitled to review his case and evaluate investments in accordance with national law of the host Contracting Party and the principles set out in this Article, the court or other competent authority of that Contracting Party.

## **Article 6. 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, state of emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, provided the latter Contracting Party in respect of restitution, compensation, damages or other settlement treatment no less favorable than that accorded by the latter Contracting Party to its own investors or investors states that the most favored nation, whichever of these regimes are more favorable to the investor.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of one Contracting Party who in any situation referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) requisitioning of their investment or part thereof by armed forces or authorities of the latter Contracting Party,

b) destruction of their investment or part thereof by armed forces or authorities, which was not required by the necessity of the situation,

Provided the latter Contracting Party restitution or compensation which in any case is urgent, adequate and effective, and any compensation arising from this should be fully accessible, paid without delay and shall include interest at a commercial rate established on a market the basis for the currency of payment from the date of requisitioning or destruction until the date of actual payment.

3. Without prejudice to the provisions of Article 9 of the Agreement, the investor whose investments expropriated is entitled to review his case and evaluate investments in accordance with national law of the host Contracting Party and the principles set out in this Article, the court or other competent authority of that Contracting Party.

## **Article 7. Free Transfer**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their investments and transfer payments related to investments in its territory and abroad. Such payments shall include in particular, though not exclusively:

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

b) profits;

- c) proceeds obtained from the total or partial sale or transfer of the right to dispose of the investment, including the sale of shares;
- d) amounts required for the payment of costs arising from investment management, namely payments on loans, payment of royalties, fees for management, license fees or other similar expenses;
- e) compensation payable pursuant to Articles 5 and 6;
- f) payments arising from the settlement of the dispute;
- g) salary or other pay staff employed abroad who works with investment.

2. Each Contracting Party shall further ensure that the transfers under paragraph 1 of this Article shall be made without any restriction in freely convertible currency and at current market exchange rate applicable on the date of transfer of currency, which is immediately transferred.

3. In the absence of the foreign exchange market last exchange rate applied to special rights borrowing.

4. In case of delayed transfer of the host Contracting Party tradition also include interest at the commercial rate established on a market basis for the currency of the date of the request for transfer to the date of actual transfer and paid by that Contracting Party.

## **Article 8. Subrogation**

If a Contracting Party or identified her office pays according indemnity, guarantee or insurance contract on investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or designated her representation and the right of first Contracting Party or its designated representative to exercise on the basis of subrogation any such right and claim to the same extent as its predecessor.

## **Article 9. Disputes between an Investor and a Contracting Party**

1. Any dispute arising directly as a result of investments between a Contracting Party and an investor of the other Contracting Party, should resolve through consultations and negotiations between the parties to the dispute.

2. If the dispute is not settled within three (3) months from the date on which it was raised in writing, the dispute shall be submitted to the selection of the investor:

- a) the competent court of the Contracting Party in the territory of which the investment; or
- b) the arbitration of the International Center for Settlement of Investment Disputes (ICSID), set up under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18, 1965 (hereinafter - "Centre"), in case of availability such a center; or
- c) to arbitration by the Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Convention referred to in subparagraph (b) of this paragraph; or
- d) any arbitration ad-hoc, which, unless otherwise agreed by the parties to the dispute created under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who submitted the dispute to a national court may refer to one of the arbitral tribunals mentioned in paragraphs 2 (b) - (d) of this Article, if the adjudication of the dispute on the subject of the national court, the investor shall notify its decision to no longer carry the case through national proceedings and withdraws it.

4. A Contracting Party which is a party to the dispute may declare objections at any stage of the arbitration procedure or of the award to the effect that the investor who is the other party to the dispute has received indemnity in that part of compensation which are covered by such insurance.

5. Each Contracting Party gives its unconditional consent to the submission of the dispute between it and an investor of the other Contracting Party to arbitration under this Article.

4. The award shall be final and binding on the parties involved in the dispute, and enforceable in accordance with domestic law.

## **Article 10. Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement to the extent possible, be settled through diplomatic channels.
2. In the event that the dispute is not settled in this way within six (6) months after the date on which any Contracting Party applied for such negotiations, at the request of either Contracting Party submitted the dispute to arbitration.
3. Such arbitration is for each individual case as follows. Within two (2) months after receiving the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Then these two members elect a third State who, as agreed 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 the appointments are not made within the periods specified in paragraph 3 of this Article, any Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or otherwise prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party and there is no other reason because of which he can not perform the said function, be invited to make the necessary appointments.
5. The Tribunal shall reach its decision by majority vote. The decision of the Tribunal is final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of court member appointed by that Contracting Party and of its representation in the arbitration process. Both Contracting Parties shall assume an equal share of expenses for the Chairperson, as well as any other costs. Arbitration may take a different decision on the allocation of costs. In all other respects Arbitration shall determine its own rules of procedure.
6. Questions litigation referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognized principles of international law.

## **Article 11. Permits**

1. Each Party shall in accordance with its own law favorably to requests for investment and immediately provides the necessary permits required in its territory in connection with investments of investors of the other Contracting Party.
2. Each Party shall in accordance with its laws and regulations provide temporary visas for entry and stay and provide the necessary supporting documentation to individuals recruited from abroad as executives, managers, specialists or technical personnel in connection with an investment by investors of the other Contracting Party, and necessary for business, provided that such persons meet the requirements of this paragraph, and provide temporary visas for entry and residence for members of their families (spouses and minor children) for the same period, as for employed persons.

## **Article 12. Application of other Obligations**

1. If the law of either Contracting Party or obligations under international law existing at present or in the future be established between the Contracting Parties in addition to this Agreement contain a rule, general or specific, entitling investments made investors of the other Contracting Party to a treatment more favorable than is provided by this Agreement, such rules to the point where they are more favorable to the investor, prevail over this Agreement.
2. Each Contracting Party shall observe any other obligation that is on a specific investment of an investor of the other Contracting Party.

## **Article 13. Application of the Agreement**

1. This Agreement replaces and terminates the validity of the Agreement between the Government of Ukraine and the Government of the Republic of Finland on the promotion and mutual protection of investments, signed in the city. Kyiv May 14, 1992.
2. This Agreement shall apply to all investments made by investors of either Contracting Party before or after the entry into force of this Agreement, but does not apply to any dispute concerning investments which arose or any claim which was settled before its entry into effect.

## **Article 14. General Exceptions**

1. Nothing in this Agreement shall prevent a Contracting Party from taking any measures necessary to protect its essential security interests in time of war or armed conflict, or other emergency in international relations.
2. Provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party or a disguised restriction on investment, nothing in this Agreement shall prevent the Contracting Parties to take any measures necessary to maintain public order.
3. The conditions shall not apply to Article 5, Article 6 or paragraph 1 (e) of Article 7 of this Agreement.

## **Article 15. Transparency**

1. Each Party shall promptly publish or otherwise make public its laws, regulations, procedures and administrative and judicial decisions of general application as well as international agreements that affect the investments of investors of the other Contracting Party in the territory of the former Party.
2. Nothing in this Agreement requires the Contracting Parties to provide or allow access to confidential or proprietary information, including information on specific investors or investments, the disclosure of which may violate the law or conflict with laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

## **Article 16. Consultations**

The Contracting Parties shall at the request of either Contracting Party shall consult to review the implementation of this Agreement and studying any issue that arises from the implementation of this Agreement. Such consultations are held between the competent authorities of the Contracting Parties in a place and on dates agreed through appropriate channels.

## **Article 17. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other of the completion of all internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of the last notification.
2. This Agreement shall remain in force for twenty (20) years and at the end of this period remain in force if either Contracting Party twelve months notifies in writing of its intention to terminate the Agreement.
3. With respect to investments made prior to the date of termination of this Agreement, the terms of Articles 1 - 16 remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Helsinki on 7 October 2004 in duplicate in Ukrainian, Finnish and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of Ukraine

For the Government of Finland