

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

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

Desiring to intensify economic cooperation 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 such investments favour the expansion of the economic relations between both countries and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of that Contracting Party, and includes in particular but not exclusively:

- (a) Movable and immovable property as well as other rights in rem such as mortgages, liens, usufruct, pledges;
- (b) Shares, stock or other forms of participation in a company;
- (c) Claims to money or to any performance having an economic value;
- (d) Intellectual or industrial property rights, such as patents, copyrights, technical processes, trade names, know-how, goodwill;
- (e) Any right conferred by law or contract including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which an asset is invested does not affect its character as an investment. 2. The term "Returns" means the amounts lawfully yielded by an investment and in particular but not exclusively includes profits, dividends and interest.

3. The term "Investor" means:

- (a) Any natural person who has the nationality of either Contracting Party in accordance with its laws;
- (b) Any company, enterprise, partnership or organization incorporated or constituted in accordance with the laws of the Contracting Party and having its seat in the territory of the latter.

4. The term "Territory" means the state territory of each Contracting Party, including internal waters and the territorial sea, as well as the sea, 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 and protect in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.

2. Reinvested returns shall enjoy the same protection as the initial investment.

3. Each Contracting Party shall, subject to its laws and regulations, examine in good faith requests by investors of the other Contracting Party and key personnel employed by such investors in order to engage in activities connected with the investments and members of their families forming part of their households, to enter and remain temporarily in its territory.

Article 3. Treatment of Investments

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment no less favourable than that accorded to investments made by investors of any third State.

2. Investors of either Contracting Party shall be accorded in the territory of the other Contracting Party as regards expansion, management, operation, use, enjoyment and disposal of their investments, treatment which is no less favourable than that accorded to investors of any third State.

3. The provisions of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investor of the other Contracting Party the present or future benefit of any preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) An existing or future customs union, free trade area, economic community, multilateral investment agreements or similar international institutions, or

(b) Any multilateral or bilateral agreement or arrangement relating wholly or mainly to taxation on the basis of reciprocity.

4. 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 regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than provided for by the present Agreement, such regulations shall to the extent they are more favourable prevail over the present Agreement.

Article 4. Compensation for Losses

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, state of emergency or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State.

Article 5. Expropriation

1. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to measures having the same effect unless undertaken in the public interest on a non-discriminatory basis under due process of law, against prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment, immediately before the expropriation or the impending expropriation became public knowledge, whichever is earlier, shall be made without delay and shall include interest at LIBOR from the time of expropriation until the date of actual payment, be realizable and freely transferable in convertible currency.

Article 6. Transfer of Payments

1. Each Contracting Party shall ensure the investors of the other Contracting Party the free transfer into and out of its territory of:

(a) Any capital and additional amounts intended to maintain or increase the investment;

(b) Returns;

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

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

(e) Compensation payable pursuant to Articles 4 and 5;

(f) Payments arising from the settlement of a dispute under Article 8.

The provisions of this paragraph shall not be construed so as to permit tax evasion. 2. The Contracting Party shall further ensure that transfers referred to in the preceding paragraph shall be made without delay, in a freely convertible currency at the prevailing market rate of exchange applicable on the date of transfer with respect to spot transactions in the currency to be transferred.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights under Article 9, recognize the transfer of rights or titles of such an investor to the former Contracting Party or its designated agency. The said Contracting Party or its designated agency shall be entitled to exercise such rights or titles to the same extent as the investor, subject to obligations duly met, to which such subrogated rights or titles are liable.

Article 8. Investment Disputes

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party relating to an investment by an investor of the former Contracting Party in the territory of the latter Contracting Party should be settled amicably.

2. If such a dispute cannot be settled within three months from the date either party to the dispute requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party in whose territory the investment was made or alternatively to the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", done at Washington, March 18, 1965 in case both Contracting Parties are parties to the Convention or to an ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. For the purpose of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Contracting Party and an investor of the other Contracting Party; (b) an alleged breach of any right conferred or created by this Agreement with respect to an investment; or (c) the interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to such investor, provided that the denial of an investment authorization shall not in itself constitute an investment dispute unless such denial involves any alleged breach of any right conferred or created by the present Agreement.

4. The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

5. At any stage of arbitration and conciliation or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage, or in case of subrogation, referred to in Article 7, the objection, that the investor is no longer entitled to pursue his original rights and claims.

Article 9. Disputes between Contracting Parties

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

2. If such a dispute has not been settled in accordance with paragraph (1) of this Article within a period of three months from the date at which either Contracting Party requested negotiations, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

The arbitration tribunal shall be set up from case to 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. 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 the necessary appointments. If the President is

a national of either Contracting Party or if he/she is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if 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 Chairman and the members of the tribunal have to be nationals of States with which both Contracting Parties maintain diplomatic relations.

6. The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

7. 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.

Article 10. Consultations

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning any question related to the present Agreement. The place and time of such consultations shall be agreed upon through diplomatic channels.

Article 11. Application of the Agreement

1. This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any investment dispute which arose, or any such claim which was settled before its entry into force.

2. This Agreement substitutes the Agreement between the Government of the Republic of Finland and the Government of the People's Republic of Bulgaria on Mutual Promotion and Protection of Investments, done at Helsinki on February 16, 1984.

Article 12. 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 fifteen years. Thereafter its validity shall be extended automatically for every following period of five years unless either Contracting Party in writing notifies at least twelve months prior to the expiry of such period 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 11 shall remain in force for a further period of fifteen years from the date of notification referred to in paragraph (2) of this Article.

Done in duplicate at Plovdiv on the 3rd day of October 1997, in the English language.

For the Government of the Republic of Finland

Matti Vuoria

For the Government of the Republic of Bulgaria

Valentin Vassilev