

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

The Government of the Republic of Finland and the Government of the Republic of Costa Rica, 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,

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 any 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 and any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;

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

(c) titles or claims to money or rights to any performance having an economic value, directly related to an investment;

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

(e) concessions conferred by law, by administrative act or under a contract by a competent authority, including concessions to undertake any economic and commercial activity, including any rights to search for, develop, cultivate, extract or exploit natural resources.

Any alteration of the form of an investment does not affect their character as investments.

Returns shall be considered as a component of investment.

2. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interest, royalties, capital gains, other current income or any payments in kind related to an investment.

3. The term "Investor" means for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with the laws of the latter and the provisions of this Agreement:

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

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

4. The term "Territory" means the land territory, internal waters and territorial sea and the airspace above them and the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Contracting Party has

sovereignty, exercises sovereign rights or exclusive jurisdiction in accordance with its national laws in force and international law for the purpose of exploration and exploitation of the natural resources of such areas.

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

1. Each Contracting Party shall encourage and create favourable conditions in its territory to investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.
2. Each Contracting Party shall in its territory at all times accord to investments of investors of the other Contracting Party fair and equitable treatment and full and constant legal protection and security.
3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the management, maintenance, use, enjoyment, acquisition or disposal of investments of investors of the other Contracting Party.
4. Neither Contracting Party shall in its territory impose unreasonable or discriminatory 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.
5. Each Contracting Party shall, in accordance with its laws and regulations, give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory. Such permits should also include authorisations for engaging top managerial and technical personnel of the investor's choice, regardless of their nationality.

## **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 which is not less favourable than the host Party accords to the investments made by its own investors or by investors which are granted the most favoured nation treatment, whichever is the more 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 investors which are granted the most favoured nation treatment, whichever is the more favourable to the investor.

## **Article 4. 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 or any other similar institution of regional economic integration 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
- c) any multilateral convention or treaty relating wholly or mainly to investments.

## **Article 5. Transparency**

Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the operation of the Agreement.

## **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, direct or indirect, having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. The compensation shall amount to the fair market value of the expropriated investment, immediately before the action of expropriation was taken. The fair market value shall not reflect any change in value of the investment occurring because the expropriation had become publicly known 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 deposit rate established on a market basis where the expropriation was made, which will be calculated from the date of dispossession of the expropriated property 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 that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

5. Nothing in this Article shall affect the right of a Contracting Party to negotiate with the other Contracting Party, or with any other third State, quantitative restrictions that are in line with applicable international trade agreements, nor the Contracting Party's right to allocate such quantitative restrictions using the mechanisms and the criteria the Contracting Party considers appropriate.

## **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 to investors which are granted the most favoured nation treatment, whichever is the more favourable to the investor. Resulting payments, if any, 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 forces or authorities, or

(b) destruction of its investment or a part thereof by the latter's forces or authorities, which was not required by the necessity of the 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 unrestricted transfer, into and out of its territory, of their investments and of payments related with such investments. Such transfers 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, including the sale of shares;

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

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

(f) payments arising out of the settlement of a dispute;

(g) payments under a contract including a loan agreement;

(h) 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 effected without any restriction or delay, in a freely convertible currency. Unless otherwise agreed by the investor, transfers shall be made at the prevailing market rate of exchange applicable on the date of transfer with respect to spot transactions in the currency to be transferred and shall be effectively realisable and immediately transferable. If a market rate is unavailable, the applicable rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

## **Article 9. Subrogation**

If a Contracting Party or its designated agency makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim from the investor to the former Contracting Party, or its designated agency, as well as the entitlement by virtue of subrogation, to exercise the rights and enforce the claims of that investor. The subrogation rights or claims shall not exceed the original rights or claims of such investors.

## **Article 10. 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 will be notified in writing by the investor to the host Contracting Party. Such notification shall include relevant information. To the extent possible the dispute shall be settled amicably between the parties to the dispute.

2. If the dispute cannot thus be settled within three (3) months, following the date in which the notification referred to in paragraph 1 above was sent by the investor through certified mail or equivalent to the Contracting Party in whose territory the investment was made, the dispute may, at the choice of the investor, be submitted:

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

(b) or to arbitration by the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965;

(c) or to the Additional Facility Rules of ICSID, provided that only one of the Contracting Parties is a party to the ICSID Convention;

(d) or to 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).

Both Contracting Parties give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the above mentioned tribunal or alternative arbitration procedures.

3. Once the investor has submitted the dispute either to a competent Tribunal of the disputing Contracting Party or to an arbitral procedure, the selection of one or the other shall be final.

4. The arbitral award shall be based on:

(a) the provisions of this Agreement;

(b) the national laws of the Contracting Party where the investment is made;

(c) the generally recognised principles of International Law.

5. 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 arbitration 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.

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

7. The Contracting Parties shall abstain from addressing through diplomatic channels any matter submitted either to the domestic tribunals or to arbitration tribunals according to the terms of this Article, except in the case that the disputing Party has not complied with the judicial or arbitral decision.

## **Article 11. 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 dictate its judgement on the basis of the provisions of this Agreement and on the basis of recognised principles of International Law.

6. 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 any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects the Arbitral Tribunal shall determine its own rules of procedure.

## **Article 12. Entry and Sojourn of Personnel**

Subject to its applicable laws relating to the entry and sojourn of non-nationals, a Contracting Party shall permit natural persons of the other Contracting Party and other personnel and personnel employed in connection with the investment by an investor of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments, as well as members of their families.

## **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. Consultations**

The Contracting Parties shall consult each other from time to time for reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of both Contracting Parties at a place and at a time agreed upon through diplomatic channels.

## **Article 15. Application of Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or any claim, which was settled before its entry into force

## **Article 16. Entry Into Force , Duration and Termination**

1. The Contracting Parties shall notify each other when their constitutional requirements 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 an initial 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 through 15

shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

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

Done in duplicate at San José on the 28th of November 2001 in the Finnish, Spanish and English languages, all texts being equally authoritative. In case of divergence, the English text shall prevail.

For the Government of the Republic of Finland

For the Government of the Republic of Costa Rica