

# AGREEMENT BETWEEN THE REPUBLIC OF FINLAND AND THE STATE OF KUWAIT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Finland and the Government of the State of Kuwait, hereinafter referred to as the 'Contracting States'

Desiring to intensify economic co-operation between both Contracting States;

Intending to create favourable conditions for investments by investors of either Contracting State in the territory of the other Contracting State;

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of business initiative and to the increase of the prosperity in both Contracting States.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement, unless the context otherwise requires:

- (1) The term 'investment' shall mean every kind of assets owned or controlled directly or indirectly by an investor of a Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that Contracting State, and shall include in particular, though not exclusively:
- (a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufructs and similar rights including property under a lease agreement;
  - (b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans and securities issued by a Contracting State or any of its investors and returns retained for the purpose of reinvestment;
  - (c) Claims to money or to any performance having economic value;
  - (d) Intellectual and industrial property rights, including, but not limited to, copy rights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill and other similar rights;
  - (e) Any right conferred by law or contract and any licences and permits issued pursuant to law, including rights to prospect, explore, extract or utilize natural resources, and rights to manufacture, use and sell products.
- (2) Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.
- (3) The term 'investor' shall mean:
- (a) Any 'natural person' holding the nationality of a Contracting State in accordance with its laws; and
  - (b) Any 'juridical person' with respect to either Contracting State including the Government of either Contracting State and any entity established in accordance with, and recognized as a juridical person by the laws of either Contracting State, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, foundations, companies, firms, establishments, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting State as a juridical person and in which such Contracting State or any of its nationals or any juridical person established within its jurisdiction has a controlling interest.
- (4) The term 'own' or 'control' shall also include ownership or control exercised through subsidiaries or affiliates wherever located.

(5) The term 'returns' shall mean amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees and payment in kind.

(6) The term 'territory' shall mean all the land and sea area of a Contracting State recognized by international law including any area beyond the territorial sea which in accordance with international law is designated under the laws of a Contracting State as an area over which a Contracting State exercises sovereign rights or jurisdiction.

(7) The term 'associated activities' includes, but is not limited to the activities listed below. Such activities shall be admitted in accordance with the laws and regulations of the Contracting State:

(a) The establishment, control and maintenance of branches, agencies, offices or other facilities for the conduct of business;

(b) The organization of companies, the acquisition of companies or interests in companies or in their property, the management, control, maintenance, use, enjoyment and expansion, the sale, liquidation, dissolution or other disposal of companies organized or acquired;

(c) The making, performance and enforcement of contracts related to investments;

(d) The acquisition, ownership, use and disposal by any legal means of property of all kinds;

(e) The borrowing of funds from local financial institutions, as well as the purchase and issue of equity shares in the local financial markets, and the purchase of foreign exchange for the operation of investments.

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

(1) Each Contracting State shall in its territory encourage investments by investors of the other Contracting State and admit such investments and activities associated therewith in accordance with its laws and regulations. It shall insure investors of the other Contracting State and their investments fair and equitable treatment.

(2) Each Contracting State shall endeavour to take the necessary measures for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(3) Investors of one Contracting State shall be entitled to apply to the competent authorities in the other Contracting State for the appropriate facilities, incentives and other forms of encouragement and that Contracting State shall endeavour to grant such investors all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall be determined by the laws and regulations of that Contracting State.

(4) The Contracting States may periodically consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

(5) Investors of either Contracting State shall be permitted to engage top managerial and technical personnel of their choice regardless of nationality, and each Contracting State shall in this respect make available all necessary facilities to the extent permitted by its laws and regulations. The Contracting States shall within the framework of their national legislation examine in good faith and give sympathetic consideration to applications for the necessary formalities for expatriates who wish to enter and remain temporarily in the territory of the Contracting States in connection with an investment.

(6) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall to the extent permissible under its relevant laws and regulations facilitate the carrying out of such transport by enterprises of the other Contracting State.

## **Article 3. Protection of Investments**

(1) Investments by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State in a manner consistent with International law and the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or any other associated activities in connection with investments in its territory of investors of the other Contracting State.

(2) Each Contracting State shall make public all laws, regulations, administrative directives and procedures that pertain to or directly affect investments in its territory of investors of the other Contracting State.

(3) Once established, investments shall not be subject in either Contracting State to additional performance requirements which hinder their expansion or maintenance, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, or which impose any other similar additional requirements or

restrictions.

(4) Each Contracting State recognizes that in order to maintain a favourable environment for investments in its territory by investors of the other Contracting State it shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting State shall ensure to investors of the other Contracting State, the right to access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

(5) Investments by investors of either Contracting State shall not be subjected to sequestration, confiscation or any similar measures except under due process of law.

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

(1) Each Contracting State shall accord investments and associated activities in connection with these investments, made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments and associated activities of its own investors or to investors of any third state, whichever is more favourable to the investor.

(2) Each Contracting State shall accord investors of the other Contracting State, as regards compensation, transfers, returns, management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other associated activity, treatment not less favourable than that which it accords to its own investors or to investors of any third state, whichever is the more favourable to the investor.

(3) However, the provisions of this Article relating to the granting of treatment not less favourable than that accorded by one Contracting State to its own investors or the investors of any third state shall not be construed so as to oblige that Contracting State to extend to the investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, economic union, free trade area, monetary union or similar international agreement or other form of regional cooperative arrangement, to which either of the Contracting States is a party; or

(b) Any international or regional agreement or other similar arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) Each Contracting State shall not impose on the investor of the other Contracting State mandatory measures, which require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products, or any other measures having the effect of discrimination against investments by investors of the other Contracting State in favour of investments by its own investors, unless such measures are deemed vital for reasons of public order or public health.

#### **Article 5. Compensation for Damage or Loss**

(1) When investments made by investors of either Contracting State suffer damage or loss owing to war, other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting State, they shall be accorded by the latter Contracting State, treatment, as regards restitution, indemnification, compensation or other settlement, which this Contracting State accords to investments of its own investors or investors of any third state, whichever is more favourable for the investor.

(2) Without prejudice to paragraph (1), investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) Requisitioning of their property by its forces or authorities; or

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation.

Shall be accorded prompt, adequate and effective compensation for the damage or loss sustained during that period of requisitioning or as a result of the destruction of their property. Resulting payments shall be made in a convertible currency and be freely transferable without delay. (3) The condition "without delay" within the meaning of this Article and Articles 6 and 7 is deemed to be fulfilled if a repatriation or transfer is made within such period as is required for the completion of normal bank transfers. The said period shall commence on the day on which the request has been submitted and may on

no account exceed one month.

## **Article 6. Nationalisation or Expropriation**

(1)

(a) Investments by investors of either Contracting State shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter collectively referred to as "expropriation") by the other Contracting State except for the public interest related to the internal needs of that Contracting State and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis under due process of law and in accordance with domestic laws of general application.

(b) Such compensation shall amount to the fair market value of the expropriated investment immediately prior to or at the time when the decision of expropriation was announced or became publicly known, whichever is the earlier. Where the fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, replacement value, appreciation, current returns, goodwill and other relevant factors. In the event that the payment of compensation is delayed, such compensation shall include interest at the prevailing commercial rate, which in any event shall not be less than the applicable LIBOR-rate of interest, from the date of expropriation until the date of payment. The amount of compensation finally determined shall be promptly paid to the investor in a convertible currency and allowed to be freely transferred without delay.

(c) Where a Contracting State expropriates the investment of a juridical person which is established or licensed under the law in force in its territory and in which investors of the other Contracting State own shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and effective compensation is received by such investors. Such compensation shall be determined and paid in accordance with the provisions of sub-paragraph (b) above.

(2) The investor affected shall, without prejudice to his rights under Article 9 of this Agreement, have a right to prompt review, under the law of the Contracting State making the expropriation, by a competent authority of that Contracting State, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

(3) The provisions of this Article shall also apply to any direct or indirect measure of expropriation, nationalisation or other similar measures such as freezing or blocking of assets, levying of arbitrary taxes, the compulsory sale of all or a part of the investment, any state intervention, impairment, deprivation of management or control of any kind with respect to, or a measure resulting in loss of or damage to the economic value of, such an investment, if the effect of such measure or measures, would be tantamount to expropriation.

(4) A claim to compensation in accordance with the principles and provisions of this Agreement shall also exist when, as a result of an intervention by a Contracting State in any company in which investment is made by investors of the other Contracting State, the investment is impaired in substance.

## **Article 7. Transfer of Payments**

(1) Each Contracting State affirms that its legislation concerning foreign currencies is based on the principle of free movement of capital and that the transfer of payments in connection with an investment is free. Transfers shall include in particular, though not exclusively:

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

(b) The returns;

(c) Repayment of loans;

(d) Royalties and fees for the rights referred to in paragraph (1)(d) of Article 1;

(e) The proceeds from the liquidation or the sale of the whole or any part of the investment;

(f) Unspent earnings and other remuneration of nationals of the other Contracting State or any third state engaged from abroad in connection with an investment;

(g) Amounts spent for the management and maintenance of the investment;

(h) Compensations referred to in Articles 5 and 6;

(i) Payments referred to in Article 8;

(j) Payments arising out of the settlement of a dispute.

(2) Transfers of payments under paragraph (1) shall be effected without delay in a convertible currency at the applicable rate of exchange.

(3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is more favourable to the investor.

## **Article 8. Subrogation**

(1) If a Contracting State or its designated agency or a company or enterprise incorporated in a Contracting State other than an investor (the "Indemnifying Party") makes a payment under an indemnity or a guarantee it has assumed in respect of an investment or returns in the territory of the other Contracting State (the "Host State"), or otherwise acquires any of the rights and claims of such an investment as a result of the complete or partial default of the investor, the Host State shall recognize:

(a) The assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment; and

(b) That the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as its predecessor in title or the original investor.

(2) The Indemnifying Party shall be entitled in all circumstances to:

(a) The same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1) above, and

(b) Any payments received in pursuance of those rights and claims,

As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

## **Article 9. Settlement of Disputes between a Contracting State and an Investor**

(1) Any dispute between a Contracting State and an investor of the other Contracting State with respect to an investment of the latter in the territory of the former shall, unless the parties to the dispute otherwise agree in writing, be settled in accordance with the following provisions of this Article.

(2) The dispute shall as far as possible be settled amicably between the parties to the dispute.

(3)

(a) If the dispute cannot thus be settled within six months, from the date at which either party to the dispute requested amicable settlement, it shall be referred to the International Centre for the Settlement of Investment Disputes ("the Centre") for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes Between States and Nationals of Other States ("the Washington Convention"), and the Regulations and Rules of the Centre.

(b) Either party to the dispute may institute proceedings before the Centre by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Washington Convention; in the event of disagreement between the parties as to whether conciliation or arbitration is the more appropriate procedure, the investor concerned shall have the right to choose.

(c) Each party to the dispute hereby consents to the submission of disputes to the Centre for settlement by conciliation or arbitration.

(d) For the purpose of any proceedings initiated before the Centre in accordance with this Article, any company which is constituted in accordance with the legislation of one Contracting State, and which, immediately before the dispute arises, is controlled by investors of the other Contracting State, shall, for the purpose of Article 25(2)(b) of the Washington Convention be treated, as an investor of that other Contracting State.

(e) Neither Contracting State shall give diplomatic protection or bring an international claim in respect of any dispute referred to the Centre unless the other Contracting State has failed to abide by or to comply with the award rendered in such dispute.

However, diplomatic protection for the purposes of this sub-paragraph shall not include informal diplomatic exchanges for the sole purpose of facilitating the settlement of a dispute. (4) In case the Washington Convention is not applicable, then the dispute shall at the request of either party to the dispute be submitted for settlement by an arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to is the Secretary General of the Centre).

(5) In any proceedings, juridical, arbitral or otherwise, concerning a dispute between it and an investor of the other Contracting State, a Contracting State shall not assert, as a defense, its sovereign immunity. Any counter-claim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting State and its subdivisions, agencies or instrumentalities.

## **Article 10. Settlement of Disputes between Contracting States**

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall be settled as far as possible through amicable negotiations between the Governments of the two Contracting States.

(2) If a dispute cannot thus be settled within six months following the date on which such negotiations were requested by either Contracting State, it shall, upon the written request of either Contracting State, be submitted to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

(3) The arbitral tribunal shall be constituted as follows: each Contracting State shall appoint one member, and these two members shall agree upon a national of a third state as their Chairman to be appointed by the Governments of the two Contracting States. Such members shall be appointed within two months, and such Chairman within three months from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph (3) above have not been observed, either Contracting State may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting State or if he 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 State or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting State shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with applicable rules of international law and shall be final and binding on both Contracting States. Each Contracting State shall bear the cost of its member and of its representatives in the arbitral proceedings. The cost of the Chairman as well as any other costs shall be borne in equal parts by the Contracting States, unless the arbitral tribunal makes a different ruling. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 11. Relations between Contracting States**

The provisions of this Agreement shall apply irrespectively of the existence of diplomatic or consular relations between the Contracting States.

## **Article 12. Other Rules**

If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contains a regulation, whether general or specific, entitling investments or associated activities by investors of the other Contracting State to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

## **Article 13. Application**

This Agreement shall apply to all investments including those made prior to its entry into force by investors of either Contracting State in the territory of the other Contracting State, but not to any investment dispute which arose, or any claim

concerning an investment which was settled, before its entry into force.

## **Article 14. Entry Into Force**

(1) Each of the Contracting States shall notify the other that its constitutional requirements for the entry into force of this Agreement have been complied with.

(2) This Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

## **Article 15. Duration and Termination**

(1) This Agreement shall remain in force for a period of thirty (30) years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State in writing of its intention to terminate the Agreement.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this Agreement.

In witness whereof the respective representatives of both Contracting States, duly authorized thereto, have signed this Agreement.

Done in duplicate at Kuwait on this 10th day of March 1996 corresponding to 20th day of Shawal 1416 in the Finnish, Arabic and English languages, all texts being equally authentic. In case of divergency the English text shall prevail.

For the Republic of Finland

Ole Norrback

For the State of Kuwait

Nasser A /-Rowdan