

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF FINLAND

AND

**THE GOVERNMENT OF THE REPUBLIC OF CUBA ON THE PROMOTION
AND PROTECTION OF INVESTMENTS**

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

RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

AGREEING that a stable framework for investment will contribute to maximising the effective utilisation of economic resources and improve living standards;

RECOGNISING that the development of economic and business ties can promote respect for internationally recognised labour rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

The term "investment" means every kind of asset invested, 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, as well as any property rights and rights in rem such as mortgages, liens, pledges, leases, usufruct, and similar rights;
- (b) shares in, stocks and debentures of a company or any other forms of participation in a company;
- (c) claims to money or rights to a performance having an economical value;

(d) intellectual property rights, such as copyrights, trade marks, patents, industrial designs, trade names, geographical indications, as well as technological processes, know-how and good-will; and

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

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party, but actually owned or controlled by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party provided that they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change in 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 shall in particular, though not exclusively, include profits, dividends, interest, capital gains, royalties, or any payments in kind related to an investment.

Reinvested returns shall enjoy the same treatment as the original 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 Contracting Party and the provisions of this Agreement:

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For the Republic of Finland;

(a) any natural person who is a national of that country in accordance with its laws;

For the Republic of Cuba:

(b) any natural person who is a citizen of and has a permanent residence in this country in accordance with its laws and other legal provisions;

4. For both Contracting Parties:

(c) any legal entity such as company, corporation, firm, partnership, business association, institution or organisation, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its seat within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.

The term "territory" means the land territory, internal waters and territorial sea of the Contracting Party and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which that Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws in force.

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1. International law, for the purpose of exploration and exploitation of the natural resources of such areas. I

Article 2. Promotion and Protection of Investments

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Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit such

Investments.

2 Each Contracting Party shall in its territory accord at all times a fair and equitable treatment and full protection and security to investments and returns of investors of the other Contracting Party.

3 Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.

Article 3. Treatment of Investments

Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than that which it accords to investors of any third state and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments.

3 Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the best treatment pursuant to paragraphs 1 and 2 of this Article, whichever is the most favourable for the investors or investments, provided that such investments are made in accordance with the laws and regulations on investments of each Contracting Party in force at the time of the investment.

4 Neither Contracting Party shall in its territory impose mandatory measures or similar orders having unreasonable or discriminatory effects on investments by investors of the other Contracting Party, concerning the purchase of materials, means of production, operation, transport and marketing of its products.

Article 4. Exceptions

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

(a) free trade area, customs union, common market, economic and monetary union or any other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party,

(b) agreement for the avoidance of double taxation or other agreement on taxation, or provision relating wholly or mainly to taxation of any other international agreement,

(c) multilateral agreement relating wholly or mainly to investments.

Article 5. Expropriation

Investments by investors of one Contracting Party in the territory _____

Contracting Party shall not be expropriated, nationalized or subject, directly or indirectly, to any other measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except for a public interest on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.

2 Such compensation shall amount to the value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The value shall be determined in accordance with the generally accepted principles of valuation, taking into account, inter alia, the capital invested, the real replacement value, appreciation, current returns, the projected flow of future returns, goodwill and other relevant factors.

3. The compensation shall be paid without delay, and shall be immediately transferable in the freely convertible currency in which the investment was made or in any other freely convertible currency agreed on by the investor and the host Contracting Party. It shall include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

4 The investor whose investments are expropriated shall have the right to prompt review of the valuation of its investments in accordance with the principles set out in this Article, by a judicial 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, a state of national emergency, revolt or any other civil disturbances in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors

or investors of any third state, whichever is the more favourable for the investors.

2. Without prejudice to paragraph 1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses 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 the situation,

Shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Any resulting compensation shall be fully realisable and paid without delay, and shall include interest at a commercial rate established on a market basis for the currency of payment from the date of requisitioning or destruction until the date of actual payment.

3 Investors whose investments suffer losses in accordance with this Article shall have the right to prompt review of the valuation of their investments in accordance with the principles set out in this Article, by a judicial or other competent authority of that Contracting Party.

Article 7. 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 their investments and transfer payments related to investments. These payments shall include in particular, though not exclusively:

(a) 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) amounts required for the 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 5 and 6;

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

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

2. The transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay in the freely convertible currency in which the investment was made or in any other freely convertible currency agreed on by the investor and the host Contracting Party.

3 The transfers shall be made at the market rate of exchange applicable on the date of the transfer with respect to spot transactions in the currency to be transferred. In the absence of a foreign exchange market, the rate of exchange to be used will be the most recent rate of exchange applicable to investments from abroad (inward investment).

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non commercial risks given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such an investor to the former Contracting Party or its designated agency, and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

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Article 9. Disputes between an Investor and a Contracting Party

Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties concerned.

If the dispute has not been settled within three (3) months from the date on which it was raised in writing, it may, at the

choice of the investor, be submitted

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

(b) to the Arbitration Court of the International Chamber of Commerce. The investor who has referred the dispute to a court or arbitration tribunal cannot submit the dispute to a different court or tribunal after the award is delivered,

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

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 other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance provided that the dispute subject to arbitration is not a claim for the indemnification itself or a claim of dissatisfaction with the amount of the indemnification.

The award shall be final and binding on the parties to the dispute and shall be enforced in accordance with the applicable national law. '

Article 10. Disputes between the Contracting Parties

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

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.

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 and shall be a national of a third State with which both Contracting Parties have diplomatic relations.

4 If the necessary appointments have not been made within the periods specified in paragraph 3) of this Article, 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 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 its own member of the Tribunal and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs.

6 Issues subject to dispute referred to in paragraph 1) of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.

Article 11. Permits

1 Each Contracting Party shall, subject to its laws and regulations, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.

2 Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party, and who are essential for the enterprise as long as these persons continue to meet the requirements of this paragraph, as well as grant temporary entry and stay to members of their families (spouse and minor children) for the same period as to the persons employed.

Article 12. Application of other Rules

1 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 in this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement

2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

Article 13. Application of the 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 14. Transparency

1 Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings of general application, as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors and the other Contracting Party.

Article 15. Consultations

The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of 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 the Contracting Parties in a place and at a time agreed on through empowered authorities.

Article 16. Entry Into Force, Duration and Termination

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The Contracting Parties shall notify each other when their constituting 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.

This Agreement shall remain in force for a period of twenty (20) 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.

In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

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

Done at... this 7th day of in two originals in the

Finnish, Spanish and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA

PROTOCOL TO THE AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF FINLAND

AND

THE GOVERNMENT OF THE REPUBLIC OF CUBA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The following provisions shall be regarded as an integral part of the Agreement between the Government of the Republic of Finland and the Government of the Republic of Cuba on the Promotion and Protection of Investments:

AD ARTICLE 9 PARAGRAPH 2

In case both Contracting Parties become parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), opened for signature in Washington on 18 March, 1965, the investor shall be entitled to submit the case to international arbitration of the International Centre for Settlement of Investment Disputes established pursuant to the said Convention.

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

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