

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

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

Desiring to intensify economic cooperation to the mutual benefit of both countries and to create 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 investments favour the expansion of economic relations between the two Contracting Parties and stimulate business initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes 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 (host Party) in accordance with the laws and regulations of the host Party, and includes particularly, though not exclusively:

(a) Movable and immovable property as well as property rights such as mortgages, liens, pledges and leases;

(b) Shares and other participation in enterprises;

(c) Loans, claims to money or rights to performances having an economic value and related to an investment;

(d) Intellectual or industrial property rights, such as patents, copyrights, industrial designs, business names, know-how and goodwill;

(e) Rights confirmed by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) A change in the form in which assets are invested does not affect their character as an investment.

(3) The term "Returns" means the amounts yielded from an investment, including profits, interest, capital gains, dividends, royalty payments or other current income.

(4) The term "Investor" means:

(a) Any natural person who is a national of either Contracting Party in accordance with its laws and regulations; and

(b) Any legal person such as a company or other organization constituted in accordance with the laws and regulations of the Contracting Party and having its seat in the territory of the same Contracting Party.

(5) The term "Territory" means the land area, continental shelf and territorial sea, including 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 in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Investments by investors of one Contracting Party shall at all times enjoy full protection and security in the territory of the host Party. The host Party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party.

Article 3. Treatment of Investments

(1) The host Party shall accord to investments by investors of the other Contracting Party treatment no less favourable than it accords to investments of its own investors or by investors of any third state, whichever is more favourable to the investor.

(2) The host Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, fair and equitable treatment which in no case shall be less favourable than that which it accords to its own investors or to investors of any third state, whichever is more favourable to the investor.

Article 4. Exceptions

The provisions of this Agreement, relative to the granting of treatment no less favourable than that accorded to investors of either Contracting Party or of any third state, shall not oblige the host Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- (a) Any regional economic organization or customs union of which the host Party is or may become a party, or
- (b) Any international arrangement relating wholly or mainly to taxation, or
- (c) A multilateral convention or treaty related to investments.

Article 5. Expropriation

(1) Investments by investors of one Contracting Party in the territory of the host Party shall not be nationalized, expropriated or subjected to measures having the same effect as expropriation unless the measures are taken in the public interest, in a non-discriminatory way, under due process of law and against prompt, adequate and effective compensation and as stipulated by national law of the host Party.

(2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the date of expropriation or before the impending measures of expropriation became public knowledge, whichever is earlier.

(3) The fair market value shall be calculated in a freely convertible currency at the market rate of exchange at the moment referred to in paragraph (2) of this Article. The compensation shall be effectively realizable and paid without delay. In case of delay of actual payment, compensation shall also include interest at a generally applied international commercial rate from the date of expropriation until the date of payment.

Article 6. Compensation for Losses

An investor of the Contracting Party whose investments suffer losses in the territory of the host Party owing to war, armed conflict, civil disturbances or similar event, shall be accorded by the host Party treatment, as regards restitution, indemnification, compensation or other settlement concerning the investment, which is the most favourable of that which the host Party accords to an investor of any third state.

Article 7. Transfer of Payments

(1) The host Party shall, with respect to investments under this Agreement, ensure the unrestricted transfer of payments in connection with investments into and out of its territory. The free transfer shall include in particular, though not exclusively;

- (a) The initial capital and additional capital to maintain or increase an investment,
- (b) The proceeds from the partial or total liquidation of an investment,
- (c) Profits, interest, dividends and other current income,
- (d) Funds pursuant to repayment of a loan agreement,

- (e) Royalties and other fees,
- (f) Earnings of personnel engaged from abroad,
- (g) Payments arising out of the settlement of a dispute and
- (h) Compensation under Articles 5 and 6 of this Agreement.

(2) Transfers under paragraph (1) of this Article shall be effected without delay and in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

Article 8. Subrogation

Where the Contracting Party or its designated agency makes a payment under an indemnity or guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the host Party shall recognize the assignment to the former Contracting Party of all the rights and claims resulting from such an investment, and shall recognize that the Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

Article 9. Disputes between an Investor and a Contracting Party

(1) Any dispute which may arise between an investor of one Contracting Party and the host Party relating to an investment under this Agreement should be settled amicably.

(2) If such a dispute has not thus been settled within a period of three months from the date at which either party to the dispute requested amicable settlement, the investor shall be entitled to submit the case either to the competent tribunals of the host Party or to international arbitration. In the latter event the investor has the choice of submitting the case either to:

(a) The International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965, or

(b) 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).

(3) An investor who has submitted the dispute to national jurisdiction may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraph (2) of this Article if, before judgement has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings.

(4) The award shall be final for the parties to the dispute, and shall be executed according to national law.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should be settled through negotiations.

(2) If such a dispute has not thus been settled within six months from the date at which negotiations were requested, it shall upon request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be constituted for each individual case, each Contracting Party appointing one member. These two members shall then agree upon a citizen of a third State, to be appointed by the Contracting Parties as their Chairman. The members shall be appointed within three months and the Chairman within five months from the date of the written notice containing the request under paragraph (2) of this Article.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging this task, the appointments shall be made by the most senior deputy of the President.

(5) Unless the Contracting Parties decide otherwise, the arbitration tribunal shall determine its own procedures and take its decisions by a majority of votes taking into account the general principles of international law. Each Contracting Party shall bear the cost of its own member and its own representation in the arbitration proceedings; the cost of the Chairman and

the remaining costs shall be borne in equal parts by the Contracting Parties if the tribunal does not take a different decision. The decisions and awards of the arbitration tribunal shall be final and binding on both Contracting Parties.

Article 11. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of the other Contracting Party in addition to the present Agreement enjoys under national or international law in the territory of the host Party.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any such claim which was settled before its entry into force.

Article 12. Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the day on which the Governments of 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 twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in written notifies 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 remain in force for a further period of twenty years from that date.

Done at Helsinki on 24 June 1997 in two originals in the Finnish, Albanian and English languages all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Finland

Ole Norrback

For the Government of the Republic of Albania

Foro Dhuka