

# **Agreement between the Republic of Finland and Serbia and Montenegro on the Promotion and Protection of Investments**

The Republic of Finland and Serbia and Montenegro, hereinafter referred to as the "Contracting Parties";

DESIRING to promote greater economic co-operation between them with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

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

RECOGNIZING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party;

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

RECOGNIZING that the development of economic and business ties can promote respect for internationally recognized 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:

1. The term "investment" means every 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 legislation of the latter Contracting Party, including in particular, though not exclusively:

(a) Movable and immovable property and any other rights in rem such as mortgages, liens and pledges;

(b) Shares in and stocks and debentures of a company or any other forms of participation in a company;

(c) Claims to money and claims to a performance pursuant to contract having an economic value and associated with an investment;

(d) Intellectual property rights, such as patents, copyrights, trade marks, industrial designs and models, as well as technical processes, geographical indications, know-how and goodwill; 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, directly or indirectly, by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the legislation 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, royalties, fees and capital gains and returns 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 legislation of the latter Contracting Party 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 entity such as company, corporation, firm, partnership, business association or organisation incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party.

4. The term "territory" means:

(a) With respect to the Republic of Finland:

The land territory, internal waters and territorial sea of Finland and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which Finland exercises sovereign rights or 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.

(b) With respect to Serbia and Montenegro:

The area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which Serbia and Montenegro exercises, in accordance with its national laws and regulations and 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, in accordance with its laws and regulations, admit such investments.

2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party full and constant protection and fair and equitable treatment. In any case a Contracting Party shall accord treatment no less favourable than that required by international law and the provisions of this Agreement.

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**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments and returns a treatment no less favourable than the treatment it accords to its own investors and their investments and returns 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 and returns a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments and returns 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 and returns the better of the treatment required by paragraph 1 and paragraph 2 of this Article, whichever, according to the investor concerned, is the more favourable one.

## **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 benefit 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 other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party; or

(b) Agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation.

## **Article 5. 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 an effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for the purpose which is in the 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 fair market value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier.

3. Compensation shall be fully realisable and shall be paid without delay. It shall include interest at a commercial rate established on a market basis for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment.

4. The Contracting Parties affirm that when a Contracting Party expropriates the assets or a part thereof of a company which has been incorporated or constituted in accordance with the law in force in its territory, and in which investors of the other Contracting Party own shares, or when the object of expropriation is a joint-venture constituted in the territory of a Contracting Party, the host Contracting Party shall ensure that the articles of association and possible other relevant documents of the companies or joint-ventures concerned, as they exist at the time of expropriation, are fully honoured.

5. Without prejudice to Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other independent and 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, insurrection or riot 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 the most favoured nation, whichever, according to the investor, is the most favourable.

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 and with respect to any resulting compensation, shall be fully realisable, shall be 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 requisition or destruction until the date of actual payment.

## **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. Such 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 liquidation of the investment;

d) Amounts required for the payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, and other fees;

e) Compensation payable pursuant to Articles 5 and 6 of this Agreement;

f) Payments arising from the settlement of a dispute according to Article 9;

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

2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made without any restriction in a freely convertible currency and at the market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be immediately transferable.

3. The host Contracting Party may condition the free transfer in paragraph 2 of this Article through the equitable, nondiscriminatory and good faith application of measures ensuring investors' compliance with the host Contracting Party's laws and regulations relating to the fulfillment of fiscal obligations.

4. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

5. A Contracting Party concerned may, in the event of serious balance-of-payments difficulties or a threat thereof, adopt restrictions on transfer payments related to investments provided that the restrictions are compatible with the provisions of the International Monetary Fund. Such restrictions shall in any case be equitable, non-discriminatory and applied in good faith.

6. In case of a delay in transfer caused by the host Contracting Party, the transfer shall also include interest at a commercial rate established on a market basis for the currency of payment from the date on which the transfer was requested until the date of actual transfer and shall be borne by that Contracting Party.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize 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.

## **Article 9. Disputes between an Investor and a Contracting Party**

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

2. If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

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

(b) To arbitration by the International Center 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 (hereinafter referred to as the "Centre"), if the Centre is available; or

(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).

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraphs 2 (b) to (c) of this Article if, before a 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 and withdraws the case.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the New York Convention. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

6. 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, who 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.

7. The award shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with the relevant laws and regulations of the Contracting Party in whose territory the award is relied upon and by the competent authorities of the Contracting Party by the date, duly indicated in the award.

## **Article 10. 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 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 the member appointed by that Contracting Party 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 costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

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 by 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 legal 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 one 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. 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 diplomatic channels.

## **Article 15. Transparency**

1. 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 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.

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

1. The Contracting Parties shall notify each other in writing when their legal 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 a period of fifteen (15) 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 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 fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned representatives, being duly authorized thereto, have signed this Agreement.

Done in duplicate at Belgrade this 23 day of May 2005 in the Finnish, Serbian and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Republic of Finland

For Serbia and Montenegro