

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to expand and deepen economic and industrial cooperation on a long term basis, and, in particular, to create favourable conditions for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to protect investments by nationals and companies of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to the economic prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

- a) The term "investments" means every kind of assets and in particular, though not exclusively, includes: (i) Movable and immovable property and any other property rights such as mortgages, liens and pledges;
- (ii) Shares, stock and debentures of companies or interests in the property of such companies, securities issued by investors and returns retained for the purpose of re-investment;
- (iii) Title or a claim to money or any performance having financial value;
- (iv) Intellectual and industrial property rights and goodwill;
- (v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract, or exploit natural resources;

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved under Article 2.

- b) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees;
- c) The term "nationals" means any natural person or persons who is/are national(s) of a Contracting Party in accordance with its laws;
- d) The term "companies" means any legal person or persons constituted or incorporated under the laws and regulations of either Contracting Party and having its or their seat in the territory of the same Contracting Party;
- e) The term "territory" means the national territory of each Contracting Party, including the maritime areas, seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Scope of Agreement

1) This Agreement shall apply only to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party which have been specifically approved in writing by the competent authority of the latter Contracting Party. Such approval may contain appropriate conditions.

2) Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of investments whether made before or after the entry into force of this Agreement. Such approval can be made on the basis of an investment plan submitted by nationals or companies of the other Contracting Party.

Article 3. Promotion and Protection of Investments

1) Each Contracting Party shall, having regard to its general policy in the field of foreign investment, encourage and facilitate investments in its territory by the nationals and companies of the other Contracting Party.

2) Investments of nationals or companies of either Contracting Party shall, subject to its laws and regulations, at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 4. Treatment of Investments

1) Investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party shall be subject to a treatment no less favourable than that accorded to investments made by its own nationals or companies or by the nationals or companies of any third State, whichever is more favourable to the nationals and companies.

2) Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and no less favourable than that which it accords to its own nationals and companies or to the nationals and companies of any third State.

3) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the same Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement for the investments suffered, no less favourable than that accorded to its own nationals or companies or to the nationals or companies of any third State, whichever is more favourable to the nationals or companies. Such payment shall be freely transferable in convertible currencies.

Article 5. Exceptions

The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to the nationals or companies of either Contracting Party or to the nationals or companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation or a regional arrangement for specific projects; or
- b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or
- c) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or
- d) The grant to a particular natural or legal person of a special status under the Thai legislation pertaining to the promotion of investment.

Article 6. Expropriation

Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having effect equivalent to nationalization or expropriation against investments of nationals or companies of the other Contracting Party except under the following conditions:

- a) The measures are taken in the public interest and under due process of law;
- b) The measures are not discriminatory;
- c) The measures are accompanied by provisions for the payment of adequate and effective compensation. Such compensation shall be made without delay and amount to the market value of the investments affected. The compensation

shall be freely transferable in convertible currencies. The transfer shall be effected without delay.

Article 7. Transfer of Investments and Returns

1) Each Contracting Party shall, subject to its laws and regulations allow without delay the transfer in any freely convertible currency:

- a) The capital of and returns from investments of the nationals or companies of the other Contracting Party;
- b) The proceeds from the total or partial liquidation or sale of investments made by nationals or companies of the other Contracting Party;
- c) Funds in repayment of loans given by nationals or companies of one Contracting Party to the nationals or companies of the other Contracting Party which both Contracting Parties have recognized as investments;
- d) The earnings of nationals of the other Contracting Party who are employed and allowed to work in connection with investments in its territory.

2) Each Contracting Party shall, subject to its laws and regulations, also allow free transfer from its territory of movable property constituting part of investments by nationals or companies of the other Contracting Party.

3) The Contracting Parties undertake to accord to transfers referred to in paragraphs 1) and 2) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by nationals or companies of any third State.

Article 8. Disputes between a Contracting Party and a National or Company of the other Contracting Party

1) In case of dispute with respect to investments between a Contracting Party and nationals or companies of the other Contracting Party, consultations shall take place between the parties concerned with a view to solving the case amicably.

2) If these consultations do not result in a solution within three months from the date of request for settlement, the nationals or companies may submit the dispute, at their choice, for settlement to:

- a) The competent courts of the Contracting Party in the territory of which the investment has been made;
- b) The International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on March 18, 1965.

Article 9. Disputes between the Contracting Parties

1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through consultation or negotiation.

2) If a dispute between the Contracting Parties cannot thus be settled within six months following the date on which such negotiations were requested by either Contracting Party, it shall upon 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 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 two 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 the necessary appointments. If the President is a national of either Contracting Party or if the President 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 Party or if the Vice-President too is 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 shall be invited to make the necessary appointments.

5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decision shall be binding on both Contracting

Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its nationals or companies under a guarantee covering non-commercial risks it has granted in respect to an investment, the other Contracting Party shall recognize the transfer of any right or title of such national or company to the first Contracting Party and the subrogation of the same Contracting Party to any right or title.

Article 11. Final Clauses

- 1) This Agreement shall enter into force on the thirtieth day after the date on which 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 fifteen (15) years, and shall continue in force until the expiration of twelve months from the date that either Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement.
- 3) With respect to investments approved prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of fifteen (15) years from such date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Helsinki this 18th day of March 1994, in two originals, each in English.

FOR THE GOVERNMENT OF

FOR THE GOVERNMENT OF

THE REPUBLIC OF FINLAND

THE KINGDOM OF THAILAND

MR. PERTTI SALOLAINEN

MR. SUPACHAI PANITCHPAKDI

MINISTER FOR FOREIGN TRADE

DEPUTY PRIME MINISTER