

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

The Government of the Republic of Finland and the Government of the Republic of Poland,

Desiring to expand and deepen their mutual relations in the field of economic, industrial, scientific and technical co-operation on a long term basis and in particular to create favourable conditions for investments by investors of one Contracting Party in the territory of the other;

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

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(1) (a) "investment" shall mean any kind of asset invested in accordance with the laws of the Contracting Party receiving the investment on its territory. In particular, though not exclusively:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) stocks and other kinds of shares of companies and debentures of companies or interests in the property of such companies;

(iii) title or claim to money or to any performance having financial value;

(iv) intellectual and industrial property rights including rights with respect to copyrights, patents, trade marks, business names, industrial designs, trade secrets, technical processes and knowhow and goodwill;

(v) business concessions having financial value, that are required to conduct economic activity in accordance with the law of the Contracting Party concerned and are conferred by law, administrative decision or contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) "returns" shall mean yield on investments. in particular: profit, interest, capital gains, dividends, royalties or other current yield;

(c) "investor" shall mean, with respect to either Contracting Party:

(1) natural persons, having the citizenship of either Contracting Party,

(ii) any companies, firms, organizations and associations established or created in accordance with laws of either Contracting Party with a seat on its territory;

(d) "territory shall mean in respect of Finland and Poland the territory which constitutes the Republic of Finland and the Republic of Poland respectively;

(e) "Contracting Party" shall mean the Republic of Finland or the Republic of Poland as the context requires.

(2) (a) If an investment is envisaged in the territory of one Contracting Party by a company which is not covered by the definition in paragraph (1) (c) (ii) of this Article, but in which investors of the other Contracting Party have a predominant interest by virtue of equity participation, the former Contracting Party shall, if it admits the investment, by mutual agreement between the two Contracting Parties, regard the company as one which enjoys protection under this Agreement

in respect of the said investment.

(b) However, if such a company has neglected to claim or has invoked remedies according to another Investment protection Agreement with the third State concerned, it may not invoke protection under this Agreement.

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply to investments made in accordance with the laws, regulations and procedures of the host country.

(2) Subject to the provisions of paragraph (1) of this Article, this Agreement shall apply to all investments made in the territory of a Contracting Party by nationals or companies of the other Contracting Party after July 1, 1986.

Article 3. Supplementary Provisions

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 the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 4. Protection of Investments

Each Contracting Party shall, subject to its laws and regulations and in conformity with international law, at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party.

Article 3. Most-favoured-nation Provisions

(1) Subject to the provisions of Article 6, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of this Agreement or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of investors of any third State.

(2) Neither Contracting Party, in respect of expropriation or nationalization shall in its territory subject investors of the other Contracting Party to treatment less favourable than that which it accords to investors of third States.

Article 6. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or agreement regarding the formation of a free trade area or other forms of regional economic co-operation to which either of the Contracting Parties is or may become a party, or

(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 7. Compensation for Losses

Investment of one Contracting Party, whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, state of emergency or similar incidents shall, as regards restitution, indemnification, compensation or other form of settlement, be accorded, by the other Contracting Party treatment not less favourable than that which the Contracting Party accords to investment of third States. Such payments, if any, shall be freely transferable between the two Contracting Parties.

Article 8. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measures having effect equivalent to nationalization or expropriation in the territory 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 in accordance with international law;
- (b) the measures are not discriminatory; and
- (c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the market value of the investments affected immediately before the measures referred to above in this paragraph were taken or became public knowledge and it shall be freely transferable in convertible currencies from the Contracting Party, at the official rate of exchange prevailing on the date used for the determination of value. The transfer shall be effected without undue delay within such a period as normally required for the completion of transfer formalities, in any case not exceeding six months. The compensation shall include interest from one month after the measure until the date of payment at a rate based on London Interbank Offered Rate for the appropriate currency and corresponding period of time.

(2) The provisions of paragraph (1) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) The investor whose Investment has been expropriated, shall have the right under the law of the expropriating Contracting Party to prompt review by a judicial or other appropriate authority of that Contracting Party of his case and of valuation of his investment in accordance with the principles set out in this paragraph.

Article 9. Repatriation of Investment and Returns

(1) Each Contracting Party shall, subject to and to the extent permitted by its laws and regulations, allow without restriction or undue delay (within six months) the transfer in convertible currency of:

- (a) the profit, capital gains, dividends, royalties, technical assistance and other fees, interest and other returns accruing from investments of investors of the other Contracting Party;
- (b) funds in repayment of loans related to an investment;
- (c) the proceeds resulting from the total or partial sale or from the liquidation of any investment and;
- (d) the net earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory.

(2) The Contracting Parties shall also allow free transfer from their territories of movable property to which the investor retains his right of ownership and which constitutes a part of an investment by an investor of the other Contracting Party.

(3) The profits and any other returns from the investment in the Republic of Poland in non-convertible currency may be converted into foreign currency and transferred abroad when the competent Polish authorities have given prior permission. Such amount in convertible currency will be provided by the Polish National Bank against payment in the same non-convertible currency.

(4) The Finnish investors may use market mechanisms, e.g. auctions, to buy and sell foreign currency in accordance with the laws and regulations of the Republic of Poland. Thus received convertible currency is freely transferable.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraphs (1) (4) of this Article treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

Article 10. Disputes between a Contracting Party and an Investor

(1) Disputes between an investor of one Contracting Party and the other Contracting Party concerning the obligation of the latter under Article 8 of this Agreement in relation to an investment of the former which have not been amicably settled during three months from written notification of a claim may, at the request of either party to the dispute, be submitted for settlement either to:

- (a) the International Centre for the Settlement of Investment Disputes (hereinafter called "the Centre"), having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of the States opened for signature at Washington D.C. on 18 March 1963, 1 in the event both Contracting Parties shall have become a party to this Convention; or
- (b) an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

(2) Notwithstanding the provisions of paragraph (1) of this Article relating to the submission of the dispute to arbitration the investor shall have the right, to choose the conciliation procedure before the dispute is submitted for arbitration.

(3) The arbitral awards shall be recognized and enforced by the Contracting Parties in accordance with the 1938 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to arbitration in accordance with paragraph (1) of this Article unless:

(a) an arbitral tribunal decides that the dispute is not within its jurisdiction; or

(b) the other Contracting Party shall fail to abide or comply with any award rendered by an arbitral tribunal.

Article 11. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, if possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon request of either Contracting Party, be submitted to an ad hoc 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. The appointed members shall then select a citizen of a third State, who on the approval of 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 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 other agreements, invite the President of the International Court of Justice to make such appointments. If the President is a citizen of either Contracting Party or if any other grounds prevent him from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President is a citizen of either Contracting Party or if any other grounds prevent him from discharging the said function, the member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party and who is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

(5) The Arbitral Tribunal shall determine its own procedure. The Tribunal shall reach its decision by a majority of votes. The decision shall be final and binding on both Contracting Parties. The Tribunal shall, upon the request of either Contracting Party, state the reasons upon which the award is based.

(6) Each Contracting Party shall bear the costs of its own member of the Tribunal and of its participation in the arbitral proceedings; the costs 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.

Article 12. Subrogation

If a Contracting Party makes a payment to any of its investors under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 11, recognize the transfer of any right or title of such investor to that Contracting Party and the subrogation of that Contracting Party to any right or title, subject to the other Contracting Party's right to set off taxes or other public charges due and payable from the investor.

Article 13. Consultations

The representatives of the Contracting Parties shall, whenever needed, hold meetings in order to review the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 14. Entry Into Force

This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have

notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Termination

(1) The Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

(2) In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles 114 shall continue in effect for a further period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Helsinki, on 5th April, 1990, in two originals in the Finnish, Polish and English languages, all texts being equally authoritative. In the case of divergence of interpretation the English text shall prevail.

For the Government of the Republic of Finland:

Pertti Paasio

For the Government of the Republic of Poland:

Krzysztof Skubiszewski