

AGREEMENT BETWEEN THE GOVERNMENT OF FINLAND AND THE GOVERNMENT OF MACEDONIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

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

RECOGNISING the need to protect investments of 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 upon the treatment to be accorded of such investment 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 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 purposes 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 laws and regulations of the latter Contracting Party including, in particular, though not exclusively:

(a) Movable and immovable property or any property rights such as mortgages, pledges, leases, usufruct and similar rights;

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

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(c) Claims to money or rights to performance having economic value;

(d) Intellectual property rights such as patents, copyrights, trademarks, industrial design, business names and geographical indications, as well as technical processes, know-how and goodwill;

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

Any change in the form in which assets are invested or reinvested does not affect the nature of their character as investments.

2. The term "Investor" means:

(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, institution or organisation, incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and having its seat within the jurisdiction of that Contracting Party, irrespective of whether or not for profit and whether its liabilities are limited or not.

3. The term "Returns" means the amount yielded by investments and in particular, though not exclusively shall include profits, dividends, interests, royalties, capital gains, management fees, license fees or other similar payments related to an investment.

Reinvested returns shall enjoy the same treatment as the original investment.

4. The term "Territory" means:

(a) In respect of the Macedonian Party, the land territory, water and airspace, over which the State of the Contracting Party exercises, in accordance with international law, sovereign rights and jurisdiction.

(b) In respect of the Finnish Party, the land, territory, internal waters and territorial sea of the State 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 the State of that Contracting Party exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose in respect of exploration and exploitation of their natural resources. In respect of the Macedonian Party, the area of land, water and airspace, over which the State of Macedonia exercises sovereign rights and jurisdiction in accordance with international law. As regards the Finnish partner (belonging to the State of Finland) land territory, internal waters and territorial sea, and over the airspace, as well as beyond the territorial sea maritime zones, including the seabed and its subsoil, over which the State of Finland exercises sovereign rights or under the existing jurisdiction of national legislation and international law, for the purpose of exploration and exploitation of natural resources of such areas.

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 fair and equitable treatment and full and constant protection and security.

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

Article 3. Transparency

Each Contracting Party shall promptly publish or otherwise make publicly available, its laws, regulations and judicial decisions of general application, as well as international agreements which may affect the investments of investors of the other Contracting Party.

Article 4. Treating Your Investments

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than that which the latter Contracting Party accords to the investments and returns made by its own investors or by investors of any third state, whichever is the more favourable to the investor.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of any third state, whichever is the more favourable to the investor.

3. Each Contracting Party shall in its territory not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar measures having unreasonable or discriminatory effects.

Article 5. Exceptions

The provisions of this Agreement shall not be construed as obliging a Party to extend to investors of the other Contracting Party or investments by investors of advantage or privilege by virtue of:

- a) Any existing or future free trade area, customs union, common market, economic union or other similar economic integration agreement to which one of the Contracting Parties is or may become a party,
- b) Any international agreement or arrangement relating wholly or mainly to taxation;
- c) Any multilateral convention or treaty relating wholly or mainly to investments.

Article 6. 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 effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under 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 was taken or became public knowledge, whichever is earlier. Compensation shall include interest at a commercial rate established on a market basis for the currency in question from the date of dispossession of the expropriated property until the date of actual payment.

3. The investor whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 7. 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, treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third state, whichever, according to the investor, is the more favourable to him.

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 caused in combat action or 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.

3. Investors whose investments suffer losses in accordance to paragraph 2 of this Article, shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in paragraph 2 of this Article.

Article 8. Free Transfers

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. Transfer payments related to investments shall include in particular, though not exclusively:

- a) Principal and additional amounts to maintain or increase the investment;
- b) Returns;
- c) Proceeds obtained from the total or partial sale or liquidation of an investment;
- d) Amounts required for payment of expenses which arise from the operation of the investment, such as loans repayments or other similar expenses;
- e) Compensation payable pursuant to Articles 6 and 7;

f) Payments arising out of the settlement of a dispute;

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

2. Each Contracting Party shall further ensure, that transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer. If a market rate is unavailable, the rate to be used shall be the most recent exchange rate for conversions of the currencies concerned into Special Drawing Rights, if applicable.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity agreement, 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 recognise the assignment of any right or claim of such 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 10. Consultations

The Contracting Parties shall consult each other from time to time for 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 at a place and at a time agreed upon through appropriate channels.

Article 11. Disputes between an Investor and a Contracting Party

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

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

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

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

c) To arbitration by the Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Convention set out in subparagraph (b) of this Article; or

d) To any 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 a dispute to a national court may nevertheless still have recourse to one of the arbitral tribunals mentioned in paragraph 2 (b) - (d) of this Article, if, before judgment 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. 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 opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

5. The award shall be final and binding for the parties to the dispute and shall be executed according to national law.

6. The arbitration award shall be based on:

— The provisions of this Agreement;

— The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

— The rules and the universally accepted principles of international law.

Article 12. 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 (hereinafter "Tribunal").
3. Such a 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 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 any 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. If no necessary designations have been made within the periods referred to in paragraph 3 of this Article, either Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Party or is otherwise prevented from discharging the said function, next in seniority members of the International Court of Justice, which is not of either Contracting Party or a citizen who is not otherwise prevented from discharging the said function, are invited to make the necessary appointments.
5. The 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 at 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. In all other respects, the Tribunal shall determine its own rules of procedure.
6. Issues in dispute under paragraph 1 of this Article shall be decided in accordance with this Agreement and the generally recognised principles of international law.

Article 13. Permits

1. Each Contracting Party shall, subject to its laws and regulations, treat favorably the applications and grant expeditiously the necessary permits required in its territory in connection with the 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 documentation to natural persons employed from abroad as key personnel, including executives, managers, specialists or technical personnel who work in connection with an investment by an investor of the other Contracting Party, as well as grant temporary entry and stay to members of their families (spouse and minor children) for the same period as the persons employed.

Article 14. Application of other Provisions

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 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 obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

Article 15. 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 or claim concerning an investment which arose before its entry into force.

Article 16. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other when their constitutional 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 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.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 through 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, duly authorized thereto, have signed the present Agreement.

Done in duplicate in Skopje on 25 January 2001 in the English, Macedonian and English languages, each text being equally authoritative. In case of difference, the English text shall prevail.

For the Macedonian Government

For the Finnish Government