

AGREEMENT BETWEEN THE GOVERNMENT OF FINLAND AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Finland and the Government of the United Arab Emirates (hereinafter referred to as the Contracting States),

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting State in the Territory of the other Contracting State,

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting States and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement unless the context otherwise requires:

(1) The term "Investment" means any kind of asset, invested by an investor of one Contracting State in the Territory of the other Contracting State, provided that the investment has been made in accordance with the laws and regulations of the other Contracting State, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights including property under a leasing agreement;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting State or any of its legal persons and returns retained for the purpose of reinvestment;

(c) Liquid assets, deposits and claims to money or to any performance under contract having economic and financial value associated with an investment;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or rights under contract, including concessions to search for, develop, extract or exploit natural resources.

(2) Any alteration of the form in which assets are invested shall not affect their qualification as investments.

(3) The term "Returns" means the amount yielded by an investment, and in particular, though not exclusively, shall include capital gains, profits, interests, dividends, licences, royalties, fees or other current incomes.

(4) The term "Investor" means:

(a) The Government of the Contracting State and any other legal person, such as public and private companies, financial institutions and investment authorities, having its seat in the territory of either Contracting State.

(b) Any natural person possessing the nationality of either Contracting State in accordance with its laws.

(5) The term "Territory" means the national territory of each Contracting State, including the mainland and islands, the sea bed and subsoil, over which the Contracting State exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

- (1) Each Contracting State shall, subject to its general policy in the field of foreign investments, promote in its Territory investments by investors of the other Contracting State and shall admit such investments in accordance with its legislation.
- (2) Each Contracting State shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting State and shall not impair the management, maintenance, use, enjoyment or disposal thereof as well as the acquisition of goods and services and the sale of their production, through unreasonable or discriminatory measures.
- (3) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities to such managerial personnel in accordance with its laws and regulations.

Article 3. Treatment of Investments

- (1) Each Contracting State shall apply to investments in its Territory by investors of the other Contracting State a treatment which is no less favourable than that accorded to investments by its own investors or investors of any third State, whichever is more favourable for the investor.
- (2) Each Contracting State shall in its territory accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments or any other activity associated therewith, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable for the investor.

Article 4. Exceptions

- (1) Notwithstanding the provisions of Article 3, a Contracting State which has concluded an agreement regarding the formation of a customs union or a free-trade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to such an agreement, or by investors of some of these States.
- (2) The provisions of Article 3 shall not be construed so as to oblige one Contracting State to extend to investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation or Nationalization

- (1) Investments by the investors of either Contracting State shall not be subject to sequestration, confiscation or any similar measure and shall enjoy full and complete protection and safety in the territory of the other Contracting State.
- (2) Neither Contracting State shall take any measure of expropriation or nationalization or freezing of assets, or any other measure having the same effect or to subject the investment to any measures direct or indirect tantamount to expropriation including the levying of taxes, the compulsory sale of all or part of an investment or the impairment or deprivation of its management or control.
- (3) Measures referred to in paragraph (1) and (2) of this Article can be taken only when the following conditions are complied with:
- (a) Measures are taken for an ultimate and basic public interest;
 - (b) Measures are taken in accordance with the domestic constitution and general principles of international law;
 - (c) Measures are not discriminatory;
 - (d) Measures are taken under due process of law by the competent court and the investor shall have the right to contest against the expropriation or any such measure to the competent court of the Contracting State which has taken such measures;
 - (e) Measures are accompanied by prompt, adequate and effective compensation.
- (4) Compensation for applicable cases referred to in this Article shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation or decision thereof became publicly known. Where the market value cannot be readily ascertained the compensation shall be determined taking into account the capital invested, depreciation, replacement value, goodwill and other relevant factors. The compensation shall include interest at the rate of London Interbank Offered Rate (LIBOR) for 3-month deposits in the respective currency from the date of expropriation or loss until the date of payment.

Article 6. Compensation for Losses

(1) Investors of each Contracting State whose investments in the Territory of the other Contracting State suffer losses owing to any armed conflict, including war, a state of national emergency or civil disturbances or other similar events in the Territory of the other Contracting State shall be accorded by the other Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, which is the most favourable of that which the other Contracting State accords to the investors of any third State.

(2) Without prejudice to paragraph (1) of this Article investors of each Contracting State who, in any of the situations referred to in that paragraph, suffer losses in the Territory of the other Contracting State resulting from requisitioning or destruction of their property by forces or authorities of the other Contracting State, shall be accorded restitution or prompt, adequate and effective compensation.

Article 7. Transfer of Payments

(1) Each Contracting State shall in respect to investments by investors of the other Contracting State in its Territory allow transfers related to these investments into and out of its Territory. The freedom of transfer shall include in particular, but not exclusively:

- (a) The initial capital plus any additional capital for the maintenance and development of an investment;
 - (b) Returns;
 - (c) Payments arising out of the settlement of a dispute;
 - (d) Payments under a contract, as well as amortisation of principal and accrued interest pursuant to a loan agreement;
 - (e) Compensation pursuant to Article 5 and 6;
 - (f) Proceeds from the sale or liquidation of all or any part of an investment;
 - (g) Unspent earnings and other remuneration of personnel engaged from abroad in connection with that investment.
- (2) Transfers under paragraph (1) of this Article shall be effected without delay and in a freely convertible currency.
- (3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

(1) If a Contracting State or its designated organ makes a payment to any of its investors under a guarantee for non-commercial risks it has granted in respect of an investment in the Territory of the other Contracting State, the latter Contracting State shall, without prejudice to the rights of the former Contracting State under Article 10, recognize the transfer of any right or title of such an investor to the former Contracting State or its organ and the subrogation of the former Contracting State or its organ to any such right or title.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the principle of subrogation shall be applied only to investments that are made after the entry into force of this Agreement provided that such investments have received prior consent of the Contracting State in whose Territory the investment is made.

Article 9. Disputes between on Investor and the Contracting State

(1) Any dispute which may arise between an investor of one Contracting State and the other Contracting State relating to an investment by an investor of the former Contracting State in the territory of the latter Contracting State should be settled amicably.

(2) If such a dispute cannot be settled amicably within a period of six 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 Contracting State in whose territory the investment was made 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 of 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 and binding for the parties to the dispute, and shall be executed according to national law.

Article 10. Disputes between the Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting States.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting State, it shall at the request of either Contracting State be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting State appointing one member. These two members shall then agree upon a national of a third State with whom both Contracting States have diplomatic relations, as their chairman, to be appointed by the Governments of the two Contracting States. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting State has advised the other Contracting State of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting State may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in paragraph (4) of this Article or is a national of either Contracting State, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting State, the most senior member of the Court who is not incapacitated or a national of either Contracting State shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting States. Each Contracting State shall bear the cost of its member at the arbitration tribunal as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting States. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting States. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 11. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting State enjoys in the Territory of the other Contracting State under national or international law.

(2) Investments subject to special contracts or commitments undertaken by one Contracting State with respect to the investors of the other Contracting State shall be governed, notwithstanding the provisions of this Agreement, by the terms of these contracts and commitments in so far as their provisions are more favourable for the investor than those provided by this Agreement.

(3) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12. Entry Into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the two Contracting States have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Termination

(1) This 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 that either Contracting State in writing notifies the other Contracting State of its decision to terminate this Agreement.

(2) 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 shall remain in force for a further period of fifteen years from that date.

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

Done at Abu Dhabi on 12 March 1996 in duplicate in the Finnish, Arabic and English languages, the three texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

For the Government of Finland

Ole Norrback

For the Government of the United Arab Emirates

Ahmed Humaid Al Tayer