

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Republic of Finland and the Government of the Republic of Argentina, hereinafter referred to as the Contracting Parties,

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 Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of such investments on the basis of an Agreement will favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws. It includes 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;

(b) Shares and any other kind of participation in companies;

(c) Title to money or to any performance having an economic value; loans only being included when they are directly related to a specific investment;

(d) Intellectual property rights, including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how, goodwill and other similar rights;

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

(2) Goods that under a leasing agreement are placed at the disposal of a leasee in the territory of one Contracting Party in relation to an investment under this Agreement, shall be treated as an investment.

(3) The term "investor" means:

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal person constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party.

(4) The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party if such persons have, at the time of the investment, been domiciled in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

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

(6) The term "territory" means the national territory of either Contracting Party, and those maritime areas adjacent to the outer limit of the territorial sea of the national territory, including the seabed and subsoil, over which the Contracting Party concerned exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investments, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment of investments by investors of the other Contracting Party, and shall not impair the management, maintenance, use, enjoyment or disposal thereof through unreasonable or discriminatory measures.

## **Article 3. Treatment of Investments**

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party treatment which is no less favourable than that accorded to investments by investors of any third State.

(2) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any advantage, preference or privilege resulting from an agreement regarding the formation of a customs union, a free trade area or a common market. paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any advantage, preference or privilege resulting from an agreement regarding the formation of a customs union, a free trade area or a common market.

(3) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any advantage, 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. paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any advantage, 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.

(4) The provisions of paragraph (1) of this Article shall not be construed so as to extend to investors of the other Contracting Party the benefit of any advantage, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988. paragraph (1) of this Article shall not be construed so as to extend to investors of the other Contracting Party the benefit of any advantage, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

## **Article 4. Expropriation**

(1) Neither Contracting Party shall take, directly or indirectly, any measure of nationalization or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law; and

(b) The measures are not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) Compensation for cases referred to in paragraph 1 of this Article shall amount to the market value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge. The compensation shall include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment, shall be paid without delay and shall be effectively realizable. paragraph 1 of this Article shall amount to the market value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge. The compensation shall include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment, shall be paid without delay and

shall be effectively realizable.

## **Article 5. Compensation for Losses**

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

## **Article 6. Transfer of Payments**

(1) Each Contracting Party shall in respect to investments of investors of the other Contracting Party 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 an investment dispute;
- (d) Amortisation of principal and accrued interest payment pursuant to a loan agreement as defined in Article 1 paragraph (1), (c);
- (e) Compensation pursuant to Articles 4 and 5;
- (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 allowed to work in connection with an investment in the territory of the Contracting Party in whose territory the investment was made.

(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, with respect to spot transactions in the currency to be transferred and in accordance with local procedures. Transfers shall be allowed within a period not exceeding two months, from the date in which the request for the transfer is made.

## **Article 7. Subrogation**

(1) If a Contracting Party or any national agency acting on its behalf makes a payment to any of its investors under a guarantee or insurance it has contracted in respect to an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or the agency to any right or title held by the investor. The Contracting Party or the agency shall, within the limits of subrogation, be entitled to exercise the same rights which the investor would have been entitled to exercise.

(2) In the case of subrogation as defined in paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or the agency.

## **Article 8. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established thereafter between the Contracting Parties in addition to the present Agreement or if any agreement between an investor of one Contracting Party and the other Contracting Party contain rules, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for in the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

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

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one

Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted, upon request of the investor, either to:

- the competent tribunal of the Contracting Party in whose territory the investment was made; or
- international arbitration according to the provisions of paragraph (3) of this Article.

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

(3) In case of international arbitration, the dispute shall be submitted, at the investor's choice, either to:

- The International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and National of other States opened for signature in Washington on 18 March 1965, once both Contracting Parties herein become members thereof. As far as this provision is not complied with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or
- an arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

(5) The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its laws.

## **Article 10. Disputes between the Contracting Parties**

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

(2) If the dispute cannot thus be settled within six 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 arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party 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 Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. paragraph (3) of this Article have not been complied with, either Contracting Party 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 Party, 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 Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments. paragraph (4) of this Article or is a national of either Contracting Party, 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 Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party 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 Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party 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 Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the

arbitration tribunal shall be determined by the tribunal itself.

## **Article 11. Application of the Agreement**

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. Final Clauses**

(1) This Agreement shall enter into force on the thirtieth day after the date on which the Government of the two 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 ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of 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. Articles 1 to 11 shall remain in force for a further period of fifteen years from that date.

Done at Helsinki on 5 November 1993 in duplicate, in the Finnish, Spanish and English languages, the three texts being equally authentic. In case of any divergency of interpretation, the English text shall, however, prevail.

For the Government of For the Government of

The Republic of Finland the Republic of Argentina