

# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Finland and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties),

INTENDING to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that the encouragement and reciprocal protection of such investment will be conducive to stimulating business initiative of investors and to increasing prosperity in both States;

DESIRING to intensify the co-operation of both States on the basis of equality and mutual benefits;

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purpose of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

- (a) Movable and immovable property and other property rights such as mortgages and pledges;
- (b) Shares, debentures, stock and any other kind of participation in companies;
- (c) Claims to money or to any other performance having an economic value associated with an investment;
- (d) Intellectual property rights, in particular copyrights, patents, trade-marks, trade-names, trade and business secrets, technological processes, know-how and good-will;
- (e) Business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

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

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

2. The term "investor" means,

- (a) Any natural person who is a national of either Contracting Party in accordance with the laws of that Contracting Party;
- (b) Any legal entity, including a company, corporation, firm, association, partnership or other organisation, incorporated or constituted under the laws and regulations of either Contracting Party and having its registered office in that Contracting Party, irrespective of whether or not for profit and whether its liabilities are limited or not.

3. The term "return" means the amounts yielded from an investment, including profits, dividends, interest, capital gains, royalties, payments in kind and any other legitimate income related to an investment.

4. The term "territory" means the territory of either Contracting Party, including the land area, internal waters and territorial

sea and the airspace above them under the sovereignty of that Contracting Party, as well as any maritime area beyond the territorial sea of that Contracting Party, over which that Contracting Party exercises sovereign rights or jurisdiction in accordance with domestic and international law.

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

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.
2. Investments of the investors of either Contracting Party shall enjoy constant protection and security in the territory of the other Contracting Party.
3. Neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment, expansion, sale or disposal of investments that have been made by investors of the other Contracting Party.

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

1. Investments by the investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party.
2. Each Contracting Party shall accord to investments by investors of the other Contracting Party treatment no less favourable than the treatment it accords to investments by its own investors with respect to the operation, management, maintenance, use enjoyment, expansion, sale or other disposal of investments that have been made.
3. Each Contracting Party shall accord to investments by investors of the other Contracting Party treatment no less favourable than treatment it accords to investments by investors of any third State, with respect to the establishment, acquisition, operation, management, maintenance, use, enjoyment, expansion, sale or other disposal of investments. Further, neither Contracting Party shall impose unreasonable or discriminatory measures on investments by investors of the other Contracting Party concerning local content or export performance requirements.
4. Each Contracting Party shall accord to investments by the investors of the other Contracting Party the treatment, which according to the investor is the more favourable of those stipulated in paragraph 2 and paragraph 3 of this Article.paragraph 2 and paragraph 3 of this Article.
5. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.
6. Provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or a disguised investment restriction, nothing in this Agreement shall be construed as preventing the Contracting Parties from taking any measures necessary for the maintenance of public order.
7. The provisions of paragraphs 1 to 3 of this Article shall not be construed so as to oblige one Contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:paragraphs 1 to 3 of this Article shall not be construed so as to oblige one Contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:
  - (a) Any existing or future customs union, free trade zone, economic and monetary union, regional economic cooperation or other similar agreement;
  - (b) Any international agreement or arrangement relating wholly or mainly to taxation;
  - (c) Any international agreement or arrangement for facilitating small scale investments in border areas.

## **Article 4. Expropriation**

1. Neither Contracting Party shall expropriate, nationalise or take other measures having similar effects, (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met. The expropriation is done:
  - (a) In the public interest;
  - (b) Under domestic legal procedure;

(c) Without discrimination, and

(d) Against compensation.

2. The compensation referred to in paragraph 1 of this Article shall be equivalent to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or the impending expropriation became public knowledge, whichever is earlier. The value shall be determined in accordance with generally recognised principles of valuation.

3. Compensation shall be fully realisable and shall, in order to be effective for the affected investor, be paid without delay. It shall include interest at a commercial rate established on a market basis for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment.

4. Where a Contracting Party expropriates the assets of a company which was incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 to 2 of this Article are applied to the extent necessary to guarantee compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated by a Contracting Party shall have the right to prompt review of its case and of valuation of its investments in accordance with the provisions of this Article, by a judicial or other competent authority of that Contracting Party.

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

1. Investments by investors of one contracting Party in the territory of the other Contracting Party that suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlements on less favourable than that accorded to investments by its own investors or investments by investors of any third State, whichever is the more favourable according to the investor concerned.

2. Investments by investors of one Contracting Party that, in any of the situations referred to in Paragraph 1 of this Article, suffer losses in the territory of the other Contracting Party resulting from requisitioning or destruction of an 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 situation shall be accorded restitution or compensation that is equivalent to the value of such losses.

## **Article 6. Transfer**

1. Each Contracting Party shall ensure to the investors of the other Contracting Party the free transfer of funds related to investments into and out of its territory, including in particular, but not exclusively:

(a) Amounts to maintain, develop or increase an investment;

(b) Profits, dividends, interests and other current income;

(c) Proceeds obtained from the total or partial sale or liquidation of an investment;

(d) Payments pursuant to a loan agreement in connection with an investment;

(e) Royalties in relation to the matters in paragraph 1 (d) of Article 1; paragraph 1 (d) of Article 1;

(f) Payments of technical assistance, technical service fees or management fees;

(g) Payments in connection with contracting projects;

(h) Earnings and other remuneration of personnel engaged from abroad who work in connection with an investment in its territory;

(i) Compensation payable pursuant to Articles 4, 5, 7 and 9.

2. A Contracting Party may, in exceptional balance of payments difficulties, exercise through equitable, non-discriminatory and good faith basis regulatory measures in accordance with time limits specified by the IMF in such situations and through powers conferred to it by law.

3. Without prejudice to paragraph 2 of this Article, each Contracting Party shall further ensure that the 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 to the currency to be transferred and shall be immediately transferable.

4. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

## **Article 7. Subrogation**

If one Contracting Party or its designated agency makes a payment to its investor under an indemnity, guarantee or contract of insurance against a non-commercial risk given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of all the rights and claims of the indemnified investor to the former Contracting Party or its designated agency, by law or by legal transaction, and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right to same extent as the investor.

## **Article 8. Settlement of Disputes between Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channels.

2. If a dispute cannot thus be settled within six (6) months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. The tribunal shall comprise of three arbitrators. Within two (2) months of the receipt of the written notice requesting arbitration, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two (2) months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four (4) months from the receipt of the written notice requesting arbitration, 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 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.

5. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the rules of international law applicable to both Contracting parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties. The tribunal may, however, make a different decision regarding the sharing of the costs. In all other respects, the arbitral tribunal shall determine its own rules of procedure.

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

1. Any dispute arising out of an investment between one Contracting Party and an investor of the other Contracting party should, whenever possible, 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 the Settlement of Investment Disputes ICSID, established by 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 Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965; or

(c) 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 on International Trade Law (UNCITRAL). Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who has submitted the dispute to national court referred to in paragraph 2 (a) of this Article may nevertheless have recourse to one of the Arbitral Tribunals mentioned in paragraph 2 (b) and 2 (c) of this Article, if the investor has withdrawn his case from national court before judgement has been delivered on the subject matter. In that case the Contracting Party to the dispute shall agree to the submission of the dispute between it and investor of the other Contracting Party to international arbitration in accordance with this Article. paragraph 2 (a) of this Article may nevertheless have recourse to one of the Arbitral Tribunals mentioned in paragraph 2 (b) and 2 (c) of this Article, if the investor has withdrawn his case from national court before judgement has been delivered on the subject matter. In that case the Contracting Party to the dispute shall agree to the submission of the dispute between it and investor of the other Contracting Party to international arbitration in accordance with this Article.

4. The Arbitral Tribunal mentioned in paragraph 2 (c) shall consist of three arbitrators. The Tribunal shall reach its award by a majority of votes. paragraph 2 (c) shall consist of three arbitrators. The Tribunal shall reach its award by a majority of votes.

5. The Tribunal shall adjudicate in accordance with the provisions of this Agreement, the law of the Contracting Party involved in the dispute (including the rules on the conflict of laws) and the rules of international law applicable to both Contracting Parties.

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

## **Article 10. Entry and Sojourn of Personnel**

Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting party, and who are essential for the enterprise, as long as these persons continue to meet the requirements of this paragraph. Immediate family members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Contracting Party.

## **Article 11. Other Obligations**

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting parties result in a position entitling investments by investors of the other Contracting party to a treatment more favourable than is provided for by the Agreement, such regulations shall prevail over the present Agreement.

2. Each Contracting Party shall observe any specific commitments it may have entered into with investors of the other Contracting Party as regards to their investments.

## **Article 12. Transparency**

1. Each Contracting party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting party in the territory of the other Contracting party.

2. Nothing in this Agreement shall require a Contracting party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

## **Article 13. Application of the Agreement**

1. This Agreement substitutes and replaces the Agreement between the Government of the Republic of Finland and the

Government of the people's Republic of China for the protection of Investments, done at Beijing on 4 September 1984.

2. 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 any claim concerning and investment which was already under judicial or arbitral process before its entry into force. Such disputes and claims shall continue to be settled according to the provisions of the Agreement done in 1984, mentioned in paragraph 1 of this Article.paragraph 1 of this Article.

## **Article 14. Consultations**

1. The representatives of the Contracting parties shall hold meetings from time to time for the purpose of reviewing:

- (a) The implementation of this Agreement;
- (b) Legal issues and information on investment opportunities;
- (c) Issues arising out of investments;
- (d) Proposals on the promotion of investments.

2. Where either Contracting Party requests consultation on any matter of paragraph 1 of this Article, the other Contracting party shall accord adequate opportunity for such consultations.paragraph 1 of this Article, the other Contracting party shall accord adequate opportunity for such consultations.

## **Article 15. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other when their respective internal legal 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 latter 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 investment made prior to the date of termination of this Agreement the provisions of Articles 1 through 14 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.Articles 1 through 14 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 authorised thereto, have signed the present Agreement.

Done in duplicate at Beijing on 15th November 2004 in the Finnish, Chinese and English languages, all texts being equally authoritative. In case of divergence, the English text shall prevail.

For the Government of the Republic Finland

For the Government of the People's Republic of China