# No. 26793

# FINLAND
# and
# HUNGARY

## Agreement for the protection of investments. Signed at Budapest on 6 June 1988

*Authentic text: English.*

*Registered by Finland on 6 September 1989.*

# FINLANDE
# et
# HONGRIE

## Accord relatif à la protection des investissements. Signé à Budapest le 6 juin 1988

*Texte authentique : anglais.*

*Enregistré par la Finlande le 6 septembre 1989.*

# AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC FOR THE PROTECTION OF INVESTMENTS

The Government of the Republic of Finland and the Government of the Hungarian People's Republic,

Desiring to intensify economic co-operation to the mutual benefit of both countries,

Intending to create favourable conditions for investment by investors of either Party in the territory of the other Party, and

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

Have agreed as follows:

## *Article 1*

## DEFINITIONS

(1) For the purposes of this Agreement:

*a*) "Investment" means every kind of asset connected with economic activities and in particular, though not exclusively, includes:

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

(ii) Shares, stocks and debentures of companies or interests in the property of such companies;

(iii) Title or claim to money or right to any performance having an economic value;

(iv) Copyrights, industrial property rights (such as patents, trade marks, industrial designs), technical processes, know-how, business names and goodwill;

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

*b*) "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

*c*) "Investor" means nationals or companies of either Party as defined below:

(i) "Nationals" means in respect of Finland and Hungary physical persons who are citizens of either country according to its laws;

(ii) "Companies" means in respect of Finland and Hungary corporations, firms or associations incorporated or constituted under the law in force in any part of Finland and Hungary respectively.

[1] Came into force on 12 May 1989, i.e., 30 days after the date (12 April 1989) on which the Contracting Parties had informed each other of the completion of the constitutional requirements, in accordance with article 13(1).

*d*) "Territory" means in respect of Finland and Hungary the territory which constitutes the Republic of Finland and the Hungarian People's Republic respectively.

(2) 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 substantial interest, 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.

*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 investors of the other Contracting Party after the first of January 1973.

*Article 3*

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 4*

MOST-FAVOURED-NATION PROVISIONS

(1) Subject to the provisions of Article 5, 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) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, state of emergency, revolt or riot, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to investors of any third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable between the two Contracting Parties.

*Article 5*

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 cooperation 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 6*

EXPROPRIATION

(1) Neither Contracting Party shall take any measures of expropriation, nationalization or any other measures, having effect equivalent to nationalization or expropriation, against the investment of an investor 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;

*b*) The measures are not discriminatory;

*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 until the date of payment at an appropriate commercial rate as determined by the Central Bank of the Contracting Party.

(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.

*Article 7*

REPATRIATION OF INVESTMENT AND RETURNS

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

*a*) The net profits, dividends, royalties, technical assistance and other fees, interest and other returns accruing from any investment of the investors of the other Contracting Party;

*b*) The proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

*c*) Funds in repayment of borrowings by investors of one Contracting Party from the investors of the other Contracting Party which both Contracting Parties have recognized as investments; and

*d*) With regard to nationals of the other Contracting Party who are employed in connection with an investment in its territory, the earnings of such nationals from the said work.

(2) The Contracting Parties shall also allow free transfer from their territories of movable property constituting part of an investment by an investor of the other Contracting Party.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraphs (1) and (2) of this Article treatment as favourable as that accorded to transfers originating from investments made by investors of any third country.

### *Article 8*

### LAWS

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 9*

### DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965[1] any legal dispute arising under Article 6 of this Agreement between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former.

(2) A company which is incorporated or constituted under the law in force in the territory of the Contracting Party and in which before such a dispute arises investors of the other Contracting Party have substantial ownership subject to the conditions set out in Article 1 (2) of this Agreement shall, in accordance with Article 25 (2) (*b*) of the Convention, be treated, for the purpose of the Convention, as a company of the other Contracting Party.

(3) If any dispute should arise, and agreement cannot be reached or the dispute cannot be finally disposed of within three months between the parties to this dispute through pursuit of local remedies or otherwise, then, the investor affected having also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention.

In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the investor affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

(4) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

*a*) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or

*b*) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

### *Article 10*

### Disputes between Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or 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 the request of either Contracting Party be submitted to an 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. 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 two 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 the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party, or if he too is 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 and who is not otherwise prevented from discharging the said function shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. The cost of the Chairman and the members of the tribunal 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. The tribunal shall determine its own procedure.

### *Article 11*

### 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 10, 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.

*Article 12*

CONSULTATIONS

Either Contracting Party may propose to the other Contracting Party to consult on any matter affecting the application of the present Agreement. The other Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

*Article 13*

ENTRY INTO FORCE, DURATION AND TERMINATION

(1) 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.

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

(3) In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles 1-12 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 in duplicate at Budapest this 6th day of June 1988 in the English language.

For the Government of the Republic of Finland:

KALEVI SORSA

For the Government of the Hungarian People's Republic:

MIKLÓS VILLÁNYI