

AGREEMENTI BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF HUNGARY FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

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

INTENDING to create favourable conditions for investments by investors of either Party in the territory of the other Party,

And

RECOGNIZING that encouragement and protection of investments on the basis of the present Agreement stimulates the initiative in this field

HAVE AGREED AS FOLLOWS:

Article 1.

For the purposes of the present Agreement:

1 . The term "investments" shall comprise every kind of asset connected with the participation in companies and joint ventures, more particularly, though not exclusively:

A/ movable and immovable property as well as any other rights in rem in respect of every kind of asset;

B/ rights derived from shares, bonds and other kinds of interests in companies;

C/ title to money, goodwill and other assets and to any performance having an economic value;

D/ rights in the field of intellectual property, technical processes and know-how;

E/ business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2 . The term "investor" shall comprise with regard to either Contracting Party:

A/ natural persons who, in the case of Spanish investors, are residents in Spain under Spanish law, and, in the case of Hungarian investors, those who possess this nationality under Hungarian law;

B/ legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat in the territory of that same Contracting Party;

Article 2.

1 . Each Contracting Party shall in its territory promote investments coming from the other Contracting Party and admit such investments in accordance with its provisions of law.

2 . The present Agreement shall apply to investments made by investors of either Contracting Party in conformity with the provisions of law of the other Contracting Party in its territory from the first January 1973.

Article 3.

1 . Each Contracting Party shall ensure fair and equitable treatment to the investments coming from the other Contracting Party and shall not impair by unreasonable or discriminatory measures, the operation, management, maintenance, use,

enjoyment or disposal thereof by those investors.

2 . More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded to investments of investor of any third State.

3 . If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4 . The treatment granted under the present Article shall not extend to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting Party to investor of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation, or on the basis of reciprocity with a third State.

Article 4.

1 . Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

A/ the measures are taken in the public interest and under due process of law;

B/ the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;

C/ the measures are accompanied by provision for the payment of just compensation. Such compensation shall be paid and made transferable without undue delay.

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.

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly:

A/ of interests, dividends, benefits and other current returns;

B/ of repayments of loans;

C/ of amounts assigned to cover expenses relating to the management of the investment;

D/ of royalties and other payments deriving from rights enumerated in Article 1, paragraph 1, letters c/, d/ and e/ of this Agreement;

E/ of additional contributions of capital necessary for the maintenance or development of the investment;

F/ of the proceeds of the sale or of the partial or total liquidation of the investment, including capital appreciation.

The transfers shall be made in freely-convertible currency purchased on the official market of the host country at the rate of exchange in force on that market. The companies in which investors of the other Contracting Party participate may have access to the official foreign currency market on the same terms as local companies without any foreign participation.

The transfers shall be made after tax obligations have been complied with, according to laws and regulations in force in each Contracting Party.

The Contracting Parties undertake to facilitate the procedures necessary to make effective these transfers without undue delay or restrictions. In particular, a three month period should not be exceeded from the date the investor has duly submitted the necessary applications to carry out the transfer until the said transfer has effectively taken place. Therefore, each Contracting Party undertakes to carry out the formalities both for the purchase of the currency and its effective transfer abroad before the aforementioned deadline.

Article 6.

If a Contracting Party, or its designated Agency, makes a payment under any sort of financial guarantee against non-commercial risks connected with an investment made by an investor of that Contracting Party in the territory of the other Contracting Party, the latter shall recognize the application of the principle of subrogation of the former Contracting Party in respect of the investor's rights and obligations with the exception of his property rights.

Therefore, this subrogation shall enable the former Contracting Party, or its designated Agency, to receive any payments for indemnification that the investor would have been entitled to. No subrogation shall be made in respect of property rights or any other rights deriving from ownership of the investment without obtaining the appropriate permits under the law on foreign investments in force in the Contracting Party in whose territory the investments has been made.

Article 7.

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 8.

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

Article 9.

1 . Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement shall as far as possible be settled by the Governments of the two Contracting Parties through diplomatic channels.

2 . If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3 . The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

4 . If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within the specified period, the other Party may invite the Secretary General of the United Nations to make the necessary appointment. If the two arbitrators are unable to reach an agreement, in the specified period, on the choice of the third arbitrator, either Party may invite the Secretary General of the United Nations to make the necessary appointment.

5 . The arbitral tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the universally acknowledged rules and principles of international law.

6 . Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7 . The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

8 . Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be borne in equal parts by the Contracting Parties.

Article 10.

1 . Any dispute between either Contracting Party and the investor of the other Contracting Party concerning expropriation or nationalization of an investment shall as far as possible be settled by the disputing parties in an amicable way.

2 . If such disputes cannot be settled within six months from the date either party requested amicable settlement, it shall upon request of the investor be submitted to:

A/ the Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm;

B/ the Arbitral Tribunal of the International Chamber of Commerce in Paris;

3 . The decision taken by the institution consulted shall be final and binding for both parties.

Article 11.

1 . This Agreement shall enter into force on the first day of the second month after both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.

2 . In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate at Budapest this ninth day of November of 1989 in Spanish, Hungarian and English languages, the three texts being equally authentic.

For the Kingdom of Spain:

Ad referendum1

For the Republic of Hungary:

Ad referendum2