

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE REPUBLIC OF HUNGARY FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Hungary and the Government of the Kingdom of Thailand, hereinafter called "Contracting Parties",

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favourable conditions for investments by nationals and companies of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that encouragement and the reciprocal 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 mean every kind of assets, in particular, though not exclusively:

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

(b) Shares, bonds and other kinds of interests in the property of such companies;

(c) Title to money and to any performance under contract having financial value;

(d) Rights in the field of intellectual property as may be recognized by the law of the Contracting Party in which the investments are made.

2 . The term "national" shall mean any natural person who possesses the nationality of either Contracting Party in accordance with the law in force in the territory of that Contracting Party.

3 . The term "company" shall mean any juridical person incorporated or constituted under the law in force in the territory of either Contracting Party whether or not with limited liability and whether or not for pecuniary profit.

4 . The term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees.

5 . The term "territory" shall mean the territory over which either Contracting Party has sovereignty or jurisdiction under the International law.

Article 2.

1 . The benefits of this Agreement shall apply only in cases where the investment by nationals or companies of one Contracting Party in the territory of the other Contracting Party has been admitted or otherwise approved in writing, if necessary, by the competent authority, in accordance with the law and regulations of that Contracting Party in the territory of which the investment is made.

2 . This Agreement shall apply to all investments made in the territory of one Contracting Party by nationals or companies of the other Contracting Party after the first of January 1973.

Article 3.

- 1 . Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate investments made in its territory by nationals or companies of the other Contracting Party.
- 2 . Investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security under the law of the latter Contracting Party.

Article 4.

- 1 . Investments and returns therefrom of nationals or companies of one Contracting Party in the territory of the other Contracting Party, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the nationals and companies of the latter Contracting Party or of any third State.
- 2 . Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own nationals and companies or to nationals and companies of any third State.
- 3 . Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments of nationals or companies of the other Contracting Party.

Article 5.

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privileges which may be extended by the former Contracting Party by virtue of:

- (a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or
- (b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or
- (c) Any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, environmental, industrial or monetary fields within the framework of specific projects; or
- (d) The grant to a particular person or company of the status of a "promoted person" under the law of Thailand on the promotion of investment; or
- (e) Any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

Article 6.

- 1 .
 - (a) In any case where investments of a national or company of one Contracting Party are subject, directly or indirectly, to any measure of expropriation or nationalization the national or company concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment which is not less favourable than that accorded to the nationals and companies of any third State in relation to any such measure. No such measure shall be taken except for public purposes, under due process of law and against payment of compensation. Such compensation shall be adequate, shall be effectively realizable, shall be made without undue delay and shall be freely transferable.
 - (b) The legality of any expropriation or nationalization and the amount and method of payment of compensation shall be subject to review by due process of law.
- 2 . Where a Contracting Party expropriates or nationalizes assets of a company which is incorporated or constituted under the law in force in its territory, and in which a national or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares. paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such national or

company of the other Contracting Party who is the owner of those shares.

3 . Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, in any event, not less favourable than would be accorded in the same circumstances to a national or company of the other Contracting Party or to a national or company of any third State.

Article 7.

Each Contracting Party shall guarantee to nationals and companies of the other Contracting Party the free transfer of the capital of, and the returns from, their investments, as well as the payment of compensation under Article 6.

Article 8.

1 . If either Contracting Party or an agency designated by it makes payment to a national or company under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of capital or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction, of any right or claim from such a national or company to the former Contracting Party or designated agency and;

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a national or company.

2 . The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

3 . If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party..subparagraph (a) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party..

Article 9.

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

Article 10.

1 . Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2 . If a dispute between the Contracting Parties cannot thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.

3 . Such an arbitral tribunal shall be constituted for each individual case as follows:

(a) Each Contracting Party shall appoint one member, and these two members shall then select a national of a third state who, an approval by the two Contracting Parties, shall be appointed Chairman of the tribunal;

(b) The said members shall be appointed within three months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

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 relevant 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 shall be invited to make the necessary appointments. paragraph 3 of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant 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 shall be invited to make the necessary appointments.

5 .

(a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure. subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

Article 11.

In case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington D.C. on March 18, 1965, each Contracting Party shall consent to submit any legal dispute that may arise out of investments made by a national or company of the other Contracting Party to conciliation or arbitration at the request of such national or company in accordance with the provisions of the said Convention.

Article 12.

This Agreement shall enter into force on the date of its signature and shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely until either Contracting Party terminates it by twelve months' prior written notice to the other Contracting Party through diplomatic channels. However, with respect to an investment of capital approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of such a termination.

DONE in duplicate, at Bangkok, on this 18th day of October, A.D. 1991, in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY

(H.E. Dr. Mihaly Kupa)

Minister of Finance

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

(H.E. Mr. Arsa Sarasin)

Minister of Foreign Affairs