

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE REPUBLIC OF PARAGUAY FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Hungary and the Republic of Paraguay, hereinafter referred to as "the Contracting Parties",

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

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

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. Definitions

For the purposes of the present Agreement:

(1) The term "investment" 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 interest 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.

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

- a) Natural persons having the nationality of that Contracting Party in accordance with its law;
- b) Legal persons constituted in accordance with the law of that Contracting Party.

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

Article 2. Promotion of Investments

(1) Each Contracting Party shall 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) The present Agreement shall apply to investments made by investors of either Contracting Party in conformity with the laws and regulations of the other Contracting Party in its territory from 1 January, 1973.

(3) The present Agreement shall in no event be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 3. Protection of Investments

(1) Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of 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 favourable than that accorded to investments by investors of any third States.

(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 investors 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. Expropriation and Compensation

(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 under reasons of necessity or in the public or social 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 provisions 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 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 Contracting Parties.

Article 5. Transfers

(1) The Contracting Parties shall guarantee the transfer of payments related to an investment. The transfers shall be made in a freely convertible currency, without undue restriction and delay.

Such transfers include particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties or fees;
- e) Proceeds from sale or liquidation of the investment.

Article 6. Subrogation

If the investments of an investor of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 7. Application of other Rules

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 rules, 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. Consultations

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

Article 9. Settlement of Disputes between the Contracting Parties

(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 States.

(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: Within two months of the receipt of the request for arbitration 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 Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within the specified period, the other Contracting 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) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

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

(7) 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. Settlement of Disputes between an Investor and the Host Contracting Party

(1) Disputes between either Contracting Party and an investor of one Contracting Party concerning an investment made by an investor of a Contracting Party in the territory of the other Contracting Party shall as far as possible be settled amicably between the parties concerned.

(2) If such disputes cannot thus be settled within six months from the date either party requested amicable settlement, the dispute shall, at the request of one of the parties concerned, be submitted to the competent tribunal of the Contracting Party in the territory of which the investment has been made.

If the judgement were not passed within a period of eighteen months, the investor concerned and the Contracting Party in the territory of which the investment has been made, shall, upon agreement, submit the dispute to an arbitral tribunal.

(3) If the dispute concerning expropriation or nationalization cannot be settled within a period of eighteen months from the date on which the dispute was submitted to the competent tribunal of the Contracting Party in the territory of which the investment has been made, the investor concerned may resort to an arbitral tribunal.

(4) The arbitral tribunal mentioned in paragraphs (2) and (3) of this Article shall be set up for each case and will be competent to settle the dispute.

The provisions of Article 9, paragraphs 3–7, shall be applied mutatis mutandis. Nevertheless, the President of the Arbitral Tribunal of the International Chamber of Commerce in Paris shall be invited to make the necessary appointments.

(5) No Contracting Party shall give diplomatic protection, or bring international claim, in respect of a dispute which one of its investors and the other Contracting Party have submitted to the competent tribunal of the Contracting Party in the territory of which the investment has been made or to an arbitral tribunal, provided for in this Article, unless such other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute.

(6) In case both Contracting Parties shall have become members of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, disputes

between either Contracting Party and the national of the other Contracting Party under the third paragraph of the present Article shall be submitted for settlement by conciliation or arbitration to the International Centre for Settlement of Investment Disputes.

(7) Judgement of the competent tribunals in the sense of this Article means for the Republic of Paraguay, a judicial decision in a one and only instance.

Article 11. Entry Into Force, Duration and Termination

(1) The Present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 15 years.

(2) Unless notice of termination has been given by either Contracting Party at least six months before the date of expiry of its validity, the present Agreement shall be extended tacitly for periods of 10 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

(3) In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles thereof shall continue to be effective for a further period of 10 years from that date.

Done in duplicate at Asunción, this day of August 1993, in the Hungarian and Spanish languages, both texts being equally authentic, and existing a third text in English, which, in case of interpretation of this Agreement, shall be taken into consideration as a reference.

For the Government of the Republic of Hungary

For the Government of the Republic of Paraguay