

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE REPUBLIC OF INDIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Hungary and the Republic of India (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties;

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

Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of asset established or acquired, in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

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

(b) Shares in and stock and debentures of a company and any other similar forms of participation in a company;

(c) Rights to money or to any performance under contract having an economic value;

(d) Intellectual property rights, including patents, copyrights, trade marks and registered designs, in accordance with the relevant laws of the respective Contracting Party;

(e) Any right or business concessions conferred by law or under contract and any licenses pursuant to law, including the concessions to search for, exploit or extract oil and other natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.

2. "investor" means any national or company of a Contracting Party who invests in the territory of the other Contracting Party.

3. "national" means natural persons having the nationality of either Contracting Party in accordance with its laws.

4. "company" means:

(a) In respect of Hungary: any entity with or without legal personality incorporated or constituted in accordance with its laws;

(b) In respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.

5. "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees.

6. "territory" means:

(a) In respect of the Republic of Hungary: when used in a geographical sense, the territory of the Republic of Hungary;

(b) In respect of the Republic of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

7. "freely convertible currency" means a currency which is widely used to make payments for international transactions and widely traded in the principal international foreign exchange markets.

Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim which was settled before its entry into force.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for 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 and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall accord to investments and returns of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or of any third State, whichever is more favourable.

3. The provisions of paragraph 1 and 2 of this Article 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 which may be extended by the former Contracting Party by virtue of:

(a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of cooperation to which either of the Contracting Parties is or may become a party;

(b) Any matter pertaining wholly or mainly to taxation.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with the laws of the Contracting Party making the expropriation, on a non-discriminatory basis and against fair compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair rate from the date of expropriation until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right, in accordance with the laws of the Contracting Party making the expropriation to review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is 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.

Article 6. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances or similar events of such serious nature shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable in a freely convertible currency.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- (a) Requisitioning of their property by its forces or authorities,
- (b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation

Shall be accorded just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in a freely convertible currency without undue delay.

Article 7. Repatriation of Investment, Returns and Transfers

1. Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to the investment in its territory to be freely transferred, without unreasonable delay. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net profits, dividends and interest;
- (c) Repayments of any loan, including interest thereon, relating to the investment;
- (d) Payment of royalties and service fees relating to the investment;
- (e) Proceeds received by investors in case of sale of shares in the investment;
- (f) Proceeds received by investors in case of sale of shares or partial sale or liquidation of the investment;
- (g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party;

2. Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Article 5 and 6 of this Agreement.

3. Unless otherwise agreed to between the parties, currency transfer under paragraph 1 of this Article shall be permitted in any freely convertible currency. Such transfers shall be made at the prevailing market rate of exchange on the date of transfer.

Article 8. Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under any such guarantee, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

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

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties in dispute.

2. Any such dispute which has not been amicably settled within a period of six months may be submitted:

- (a) At the choice of the investor for resolution, in accordance with the laws of the Contracting Party in whose territory the investment has been made to that Contracting Party's competent judicial, arbitral or administrative bodies; or
- (b) If both parties to the dispute so agree and both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965, and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or
- (c) To an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:
- (i) The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.
- (ii) The parties shall appoint their respective arbitrators within two months.
- (iii) The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding for the parties in dispute.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiation.
2. If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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 any 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. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs 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. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons who are nationals of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments made by the investors of the other Contracting Party.

Article 12. Applicable Laws

1. Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.
2. Notwithstanding paragraph 1 of this Article nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis.

Article 13. 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 rules, shall to the extent that they are more favourable, prevail over the present Agreement.

Article 14. Entry Into Force

This Agreement shall be subject to ratification and shall enter into force ninety days after the date of exchange of Instruments of Ratification.

Article 15. Duration and Termination

1. This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.
2. Notwithstanding the termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized thereto, have signed this Agreement.

DONE at New Delhi on this 3rd day of November, 2003, in duplicate each in the Hungarian, Hindi and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

For the Republic of Hungary

For the Republic of India