

AGREEMENT BETWEEN THE GOVERNMENT OF THE HUNGARIAN PEOPLES REPUBLIC AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE ENCOURAGEMENT AND THE RECIPROCAL PROTECTION OF INVESTMENTS.

Preamble

The Government of the Kingdom of Denmark and the Government of the Hungarian People's Republic,

DESIRING to create favourable conditions for investments in both States and to intensify the co-operation between enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative of investors and will increase prosperity in both States,

HAVE AGREED as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1)

(a) The term "investment" means: any right of participation in any company including any share of the capital to which investors are entitled as well as any capital appreciation and in particular, but not exclusively:

(i) Shares, parts or any other form of participation in companies incorporated in the territory of one Contracting Party,

(ii) Returns reinvested, claims to money or other rights relating to services having a financial value,

(iii) Movable and immovable property, as well as any other real rights as mortgages, privileges, guarantees and any other similar rights as defined in conformity with the law of the Contracting Party in the territory of which the property in question are situated,

(iv) Industrial and intellectual property rights, technology, trademarks, goodwill, know-how and any other similar rights,

(v) Business concessions conferred by law or by contract, including the concessions related to natural resources,

(b) The said term shall refer:

To all investments in companies made for the purpose of establishing lasting economic relations between the investor and the company and giving the investor the possibility of exercising significant influence on the management of the company concerned.

The term "investments" covers all investments made in the territory of a Contracting Party by investors of the other Contracting Party after 1 January 1973.

(2) The term "returns" means:

The amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(3) The term "investors" means:

(a) Physical persons deriving their status as nationals of either Contracting Party according to its law,

(b) Corporations, firms or associations incorporated or constituted under the law in force in either of the Contracting Parties.

(4) The term "territory" means:

(a) In respect of the Kingdom of Denmark: the territory under its sovereignty and the sea and submarine areas over which the Kingdom of Denmark exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction. The term does not comprise the Faroe Islands and Greenland.

(b) In respect of the Hungarian People's Republic:

The territory of the Hungarian People's Republic.

Article 2. Promotion of Investment

Each Contracting Party shall admit the investment by investors of the other Contracting Party in accordance with its legislation and administrative practice, and promote such investments as far as possible.

Article 3. Investment

(1) Investments of investors of either 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. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

(2) Neither Contracting Party shall in its territory subject investments made by investors of the other Contracting Party or returns of such investments to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

(3) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments or returns, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

Article 4. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, regional economic organisation, or similar international agreement 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 or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation and Compensation

(1) Investments or returns 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 related to the internal needs of the expropriating Party and subject to due process of law, on a basis of non-discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment or returns expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at a normal rate until the date of payment, be effectively realisable and be freely transferable. The investor shall have a right under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) 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 or debentures, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt,

adequate and effective compensation in respect of their investment to the owners of these shares or debentures.

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, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, 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. Such treatment should also be accorded to investors of either Contracting Party, who in any of the situations described 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.

(2) Payments resulting from any provision in this Article shall be freely transferable, made without delay and shall include interest at a normal rate until the day of payment and be effectively realisable.

Article 7. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall, subject to the right of each Contracting Party to exercise equitably, in good faith and on a non-discriminatory basis the powers conferred by its laws, allow without delay the transfer of:

- (a) The invested capital or the proceeds of total or partial liquidation or alienation of the investment;
- (b) The returns realized;
- (c) The payments made for the reimbursement of the credits for investments and interests due;
- (d) A portion of the earnings of the citizens who are allowed to work in an investment made in the territory of the other Contracting Party.

(2) Transfers of currency pursuant to Article 5, 6 and paragraph (1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article 8. Subrogation

If a Contracting Party makes payment to its own investors under a guarantee it has accorded in respect of an investment 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 in that country, of any right or claim by the investor to the former Contracting Party, as well as,
- (b) That the former Contracting Party is entitled by virtue of subrogation to exercise the rights and enforce the claims of the investor and shall assume the obligations related to the investment.

Article 9. Arbitration and Conciliation

(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 that other Contracting Party shall be subject to negotiations between the parties in dispute.

(2) If any dispute arising under Article 5 of this Agreement between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, either party to the dispute shall be entitled to submit the case to the International Centre for Settlement of Investment Disputes for 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.

Article 10. Consultations between the Contracting Parties

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 11. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties. If such a dispute cannot be settled within six months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(2) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members. If within any of the periods specified 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.

(3) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

(4) 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.

(5) The arbitral tribunal determines its own procedure.

Article 12. National or International Law

Nothing in this Agreement shall prejudice any rights or benefits under national or international law accruing to an investor of one Contracting Party in the territory of the other Contracting Party.

Article 13. 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 therefore in their respective countries have been complied with.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from that date. Articles 1 to 12 shall remain in force for a further period of ten years from that date.

DONE IN DUPLICATE at Budapest on 2nd May, 1988 in the Danish, Hungarian and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

For the Government of the Kingdom of Denmark Hans Kühne

For the Government of the Hungarian People's Republic Andreas Patko

