

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF HUNGARY AND THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to create favourable conditions for greater economic cooperation between the Contracting Parties,

Desiring to create and maintain favourable conditions for reciprocal investments;

Convinced that the promotion and protection of investments will contribute to the development of economic relations between the Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of assets invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and, in particular, though not exclusively shall include:

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

(b) Shares, stocks and other kind of securities of a company and debentures of companies or any other form of participation in a company;

(c) Claims to money or any other claim under contract having an economic value associated with an investment;

(d) Intellectual property rights, such as copyrights and other neighbouring rights and industrial property rights such as patents, licences, industrial designs or models, trade marks, trade secrets as well as goodwill, technical processes and know-how;

(e) Any right conferred by laws or regulations or under contract and any licenses and permits pursuant to laws or regulations, including the concessions to search for, extract, cultivate or exploit natural resources.

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

2. The term "investor" shall mean:

(a) A natural person having the nationality and permanent residence in one Contracting Party in accordance with its laws and making an investment in the territory of the other Contracting Party;

(b) A legal person or any other entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its headquarters in the territory of that Contracting Party and making an investment in the territory of the other Contracting Party.

3. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties and fees.

4. The term "territory" shall mean:

(a) In respect to the Republic of Hungary, the territory of the Republic of Hungary;

(b) In respect to the Federal Republic of Yugoslavia the area encompassed by land boundaries as well as the sea, seabed and its subsoil beyond the territorial sea over which the Contracting Party exercises, in accordance with its national laws and regulations and international law, sovereign rights or jurisdiction.

5. The term "freely convertible currency" shall mean any currency which is considered convertible in accordance with the laws of both Contracting Parties.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable and transparent conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy constant and full protection and security in the territory of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State whichever is more favourable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 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 Contracting Party 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 regional cooperation to which either of the Contracting Parties is or may become a party;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

(c) Any multilateral agreements on investments to which either of the Contracting Party is or may become a party.

Article 4. Compensation for Losses

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they 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.

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.

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. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest at a normal commercial rate from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in freely convertible currency.

2. The investor affected shall have a right, to prompt 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. Transfers

1. The Contracting Parties shall guarantee the free transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

(a) Capital and additional amounts to maintain or increase the investment;

(b) Returns;

(c) Funds in repayment of loans;

(d) Royalties or fees;

(e) Proceeds of sale or liquidation of the investment;

(f) The unspent earnings of investors and employees of investments of investors of the Contracting Party, in whose territory the investment has been made;

(g) Compensation according to Articles 4 and 5 of this Agreement;

(h) Payments arising out of Settlement of Dispute according to Articles 8 and 9.

2. For the purpose of this Agreement, exchange rates shall be the official rates effective in the territory of the Contracting Party where the investment was made for the current transactions at the date of transfer, unless otherwise agreed.

3. An investor may not rely on this Article to avoid payment of his fiscal or other financial obligations owed by the investor in the territory of the Contracting Party where the investment was made.

Article 7. Subrogation

1. If a Contracting Party or its designated agency 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 or its designated agency, as well as,

(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 that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other 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 that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months after a notification of the claim is given in writing, the investor shall be entitled to submit the case either to:

(a) A competent court of the Contracting Party in whose territory the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions 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, in the event both Contracting Parties shall have become a party to this Convention; or

(c) An international arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

Article 9. Settlement of Disputes between the Contracting Parties

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 the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The 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. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three 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, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be 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 appointments. If the Vice President also happens to be a national of either Contracting Party or 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 appointments.

5. The arbitration tribunal shall reach its decision on the basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitration tribunal shall decide by a majority vote. Its awards shall be final and binding on both Contracting Parties. The tribunal shall establish its own procedure.

6. Each Contracting Party shall bear the expenses of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses shall be borne in equal parts by the Contracting Parties.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 11. Applicability of this Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its laws by investors of the other Contracting Party prior to as well as after the entry 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 12. Entry Into Force, Duration and Termination

1. Each Contracting Parties shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.
2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

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

DONE in duplicate at Budapest, this 20 day of June, 2001 in two originals in the Hungarian, Serbian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Hungary

For the Federal Government of the Federal Republic of Yugoslavia