

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE REPUBLIC OF TUNISIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

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

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 . The term "investment" shall comprise every kind of asset invested 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 shall include, in particular, though not exclusively:

/a/ movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges and similar rights;

/b/ shares, stocks and debentures of companies or any other form of participation in a company;

/c/ claims to money or to any performance having an economic value associated with an investment;

/d/ intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

/e/ any right conferred by law or under contract and any licenses and permits pursuant to law, 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 on condition that this alteration is made in accordance with the laws and regulations of the Contracting Party in the territory of which the investment has been made.

2 . The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party:

/a/ the term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

/b/ the term "legal person" shall mean with respect to:

(i) The Republic of Tunisia, any legal person incorporated or constituted in accordance with its laws,

(ii) The Republic of Hungary, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws. This term also includes any body of persons having no legal personality but considered as a company by its laws.

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

4 . The term "territory" shall mean:

a) In the case of the Republic of Tunisia, the territory under its sovereignty including the territorial sea and any maritime and sub Maritime area over which the Republic of Tunisia may exercise, in accordance with international law, sovereign rights or jurisdiction;

b) In the case of the Republic of Hungary, when used in a geographical sense, the territory of the Republic of Hungary.

5. The term "freely convertible currency" means a convertible currency as classified by the International Monetary Fund, which is widely used to make payments for international transactions and widely traded in the principal international foreign exchange markets.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage 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, equitable and non-discriminatory treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment not 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 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 investors 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 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

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, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable.

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 be made without delay otherwise, adequate compensation shall be made for the delay of payment on condition that it was not caused by the investor, be effectively realizable and freely transferable in a freely convertible currency.

2. The investor affected shall have a right, to prompt review, by a judicial or other independent authority of the Contracting Party making the expropriation, 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 permit 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/ profits, interest, dividends and other current income;

/c/ funds in repayment of loans;

/d/ royalties or fees;

/e/ proceeds of sale or liquidation of the investment;

/f/ the earnings of natural persons subject to the laws and regulations of the Contracting Party, in which investments have been made;

/g/ compensation payed pursuant to Articles 4 and 5 of this Agreement.

2. For the purpose of this Agreement, exchange rates shall be the official rates effective at the date of transfer, unless otherwise agreed.

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 to 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, the investor shall be entitled to submit the case either to:

/a/ the competent court of the Contracting Party in the territory of which 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; or

/c/ an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both parties to the dispute.

3. Where an investor of one Contracting Party has submitted a dispute to the competent court of the Contracting Party in the territory of which the investment has been made or to international arbitration, this choice shall be final.

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 from the date 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 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, 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 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 arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however decide that a higher portion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

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 concluded in accordance with its laws and regulations 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 all investments established or acquired after the 1st day of January 1957 and existing at its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12. Entry Into Force, Duration and Termination

- 1 The present agreement shall in no way prejudice the obligations of the Republic of Hungary as a member state of the European Union. Consequently the provisions of the present agreement shall not be cited or interpreted neither in whole nor in part as to annul, amend or influence in any way the duties arising from the Treaty on the European Community, the Treaty on the European Union and the primary and secondary legislation of the European Union in particular, undertaken by the Republic of Hungary in the Treaty of Accession.
- 2 . The Contracting Parties shall notify each other that their constitutional requirements for the entry into force of this Agreement have been complied with. This Agreement shall enter into force on the date of the second notification.
- 3 . This Agreement shall remain in force for a period of ten years, and shall continue in force, unless terminated in accordance with paragraph (3) of this Article.paragraph (3) of this Article.
- 4 . Either Contracting Party may by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or anytime thereafter.

5 . 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.

DONE in duplicate at Tunis, this day of 13th May 2003 in the Hungarian, Arabic, and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Hungary

Andras BARSONY

Secretary of State of Foreign Affairs

For the Republic of Tunisia

Saida CHTTIOUI

Secretary of State of Foreign Affairs