

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE REPUBLIC OF CUBA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Hungary and the Republic of Cuba (hereinafter referred to as the „Contracting Parties”),

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

Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 . The term „investment" shall comprise every kind of asset 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 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; 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 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.

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 physical person having the citizenship of either Contracting Party in accordance with its laws.
- b) The term „legal person" shall mean with respect to either Contracting Party any entity incorporated or constituted in accordance with, and recognize as legal person and 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 relation to the Republic of Cuba: the land and maritime areas, including the seabed and subsoil adjacent to the outer area of the territorial sea over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with

international law;

b) In relation to the Republic of Hungary: the land over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

Article 2. 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 shall admit such investments in accordance with its laws and regulations.

2 . 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.

Article 3. National 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 which is fair and equitable and 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 investments, 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 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 benefits 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 or any multilateral agreements on investments to which both of the Contracting Party are parties;

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

c) Any multilateral agreements on investments to which either of the Contracting Parties 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 such 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.

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: 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 freely convertible currency without delay.

Article 5. Expropriation

1 . Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization 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 bases 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 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 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 constituted or incorporated under the laws in force in any part of its own territory, and which is owned wholly or partly by investors of the other Contracting Party. paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted or incorporated under the laws in force in any part of its own territory, and which is owned wholly or partly by investors of the other Contracting Party.

Article 6. Transfers

1 . The Contracting Parties shall guarantee the free transfer of payments related to investments and returns, after fulfillment of tax obligations. The transfers shall be made without any restriction and undue delay, in any freely convertible currency agreed upon by the investor and the Contracting Party in whose territory the investment was made. 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 in connection with an investment subject to the laws and regulations of the Contracting Party in which investments have been made.

2 . For the purposes of this Agreement, exchange rates shall be the official exchange rates effective for the current transactions 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 against non-commercial risks 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 of 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 the 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 cannot be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

- a) The Arbitral Tribunal of the International Chamber of Commerce in Paris; or
- b) 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. 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.

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 Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. 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 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 is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 11. Scope of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, prior or after its entry into force. It shall not be applicable to disputes which arose prior to its entry into force or to disputes directly related to events which occurred prior to its entry into force.

Article 12. Entry Into Force, Duration and Termination

- 1 . 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 latter notification.
- 2 . This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other.
- 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.

DONE in duplicate at Havana, this 22 day of October 1999 in the Hungarian, Spanish 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

FOR THE REPUBLIC OF CUBA

On signing the Agreement between the Republic of Hungary and the Republic of Cuba for the Promotion and Reciprocal Protection of Investments, the undersigned duly authorized have in addition agreed on the following provisions, which shall form an integral part of the said Agreement.

Addendum to Article 3

With regard to the principle of national treatment provided for in paragraphs 1 and 2 of Article 3, it is understood that the treatment of Cuban state companies or other national entities and the treatment of their investments can only be used as a baseline provided that such entities operate as investors, in accordance with the national legislation covering foreign investments, and as partners of a joint venture or international economic association.

Addendum to paragraph 2 of Article 8

If both Contracting Parties ever become Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature on 18 March 1965, then the case between the parties to the dispute referred to in paragraph 2 of Article 8 may also be submitted by the investor to arbitration in accordance with the above-mentioned Convention.

DONE in duplicate at Havana, this 22 day of October 1999 in the Hungarian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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