

AGREEMENT BETWEEN THE REPUBLIC OF BULGARIA AND THE REPUBLIC OF HUNGARY ON MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to develop the economic cooperation between the two States,

Intending to encourage and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of mutual benefit,

Recognizing that the mutual promotion and protection of investments, in accordance with the present Agreement, stimulates the initiatives in this field,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1 . The term "investments" shall mean every kind of asset and in particular:

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

(b) Shares, stocks or any other forms of participation in companies;

(c) Outstanding claims or rights having economic value;

(d) Copyrights, rights in the field of industrial and intellectual property right (such as patents, licences, industrial design, trade marks and trade names), technical processes, know-how and goodwill;

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

These assets shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Contracting Party where the investments are made.

A subsequent change of the form in which the investments have been made will not affect their substance as investments, provided that such a change does not contradict the laws of the relevant Contracting Party.

2 . The term "returns" shall mean profits, dividends, interest and other amounts lawfully derived from investments.

3 . The term "investor" with regard to either Contracting Party shall mean:

(a) A natural person who is a national of either Contracting Party in accordance with its applicable law.

(b) Any company, firm, partnership, organization or association with or without juridical personality, incorporated or constituted in accordance with the laws of either Contracting Party with a seat in its territory.

4 . The term "territory" shall mean:

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

(b) With respect to Bulgaria, the territory under the sovereignty of the Republic of Bulgaria, including the territorial sea, as well as the continental shelf and the exclusive economic zone over which the Republic of Bulgaria exercises sovereign rights

or jurisdiction in conformity with international law.

Article 2. Promotion and Protection of Investments

1 . Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.

2 . In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the initial investments.

3 . Each Contracting Party shall consider favourably and in compliance with its laws and regulations, questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of their families forming part of their household.

Article 3. National and Most-favoured-nation Treatment

1 . Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall be accorded treatment not less favourable than that accorded to investments made by its own investors or investors of any third State whichever is more favourable.

2 . Investors of either Contracting Party shall be accorded in the territory of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is not less favourable than that which is accorded to its own investors or to 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 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 economic 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.

4 . Each Contracting Party reserves the right to make or maintain, in compliance with its legislation in force, exceptions from national treatment granted according to paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exemption. paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exemption.

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 settlement, not 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 freely convertible currency without delay.

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.

2 . The compensation shall amount to the market value of the investments immediately before the date of expropriation and shall be paid without delay and shall carry an annual interest equal to 12 months LIBOR quoted for the currency in which the investments were made until the time of payment. The payment of such compensation shall be freely transferable.

3 . The investor affected shall have a right, to prompt review, by a judicial or other competent 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.

Article 6. Transfers

1 . Each Contracting Party shall accord to the investors of the other Contracting Party, after the fulfilment of all tax obligations of the investors, the free transfer of payments related to investments and returns. Such transfers shall include in particular:

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

(b) Returns from the investment;

(c) Proceeds obtained from the sale or from the total or partial liquidation of the investment;

(d) The sums required for payment of the expenses which arise from the operation of the investment, such as loan repayments, payment of patents or licence fees;

(e) Compensation payable in accordance with Articles 4 and 5;

(f) The remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

2 . The transfers referred to in the preceding paragraph shall be made without delay, at the official exchange rates prevailing on the date of the transfer 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 Disputes between the Contracting Parties

1 . Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiations between the Contracting Parties.

2 . If a dispute between the Contracting Parties cannot be thus settled within six months after the beginning of negotiations, 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 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 has the approval of 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 reaches its decision on the basis of the provisions of the present Agreement as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

6 . Each Contracting Party shall bear the cost of its own member 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.

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

1 . Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, as far as possible, be settled by the disputing parties in an amicable way.

2 . If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party.

3 . In case of dispute with regard to Articles 4, 5 and 6 of this Agreement, the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to:

(a) An ad hoc arbitral tribunal to be established under the arbitral rules of the United Nations Commission on International Trade Law (UNCITRAL); or arbitral rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(b) The International Centre for Settlement of Investment Disputes, in the event that Bulgaria becomes a party to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 (ICSID Convention).

4 . The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

Article 10. Application of other Rules

Should national legislation of the Contracting Parties or present or future international agreements applicable between the Contracting Parties or other international agreements entered into by both Contracting Parties contain regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 11. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and time agreed upon through diplomatic channels.

Article 12. Applicability of this Agreement

This Agreement shall also apply to investments of investors of either Contracting Party acquired within the territory of the other Contracting Party after January 1, 1965.

Article 13. 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 fulfilled. This Agreement shall enter into force on the date of the second notification.

2 . This Agreement shall remain in force for a period of fifteen (15) 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 Articles 1 to 12 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, have signed this Agreement.

DONE in duplicate at Budapest, this 8th day of June 1994, in the English language,

For the Republic of Hungary

For the Republic of Bulgaria