

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE REPUBLIC OF POLAND ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Preamble

The Republic of Hungary and the Republic of Poland (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 by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

- a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) Legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;
- c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party;
- d) An investor according to sub-paragraph c) may be required to submit proof of such control in order to be recognized by the Contracting Party in the territory of which the investment has been or is to be made as an investor of the other Contracting Party;
- e) Investors referred to in subparagraph c) may not raise a claim based on Article 6 of this Agreement if compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

(2) The term "investments" shall include every kind of assets and particularly:

- a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;
- b) Shares, parts or any other kinds of participation in companies;
- c) Claims to money or to any performance having an economic value;
- d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;
- e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

(3) Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.

(4) The term "returns" means all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees or other current income.

Article 2. Scope of Application

(1) The present Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its laws and regulations, by investors of the other Contracting Party if such investments are connected with an economic activity and have been effectuated later than 31 December 1972.

(2) The present Agreement shall not apply to investments made under intergovernmental agreements within the framework of the former Council for Mutual Economic Assistance, unless such investments are transformed according to foreign investment laws of the Contracting Parties.

(3) The present Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments that are not within the scope of the Agreement.

Article 3. Promotion and Admission of Investments

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4. Protection and Treatment of Investments

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made in its territory by its own investors, or than that granted by each Contracting Party to the investments made in its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, a customs or an economic union, or to an existing or future convention on the avoidance of double taxation or a convention on other fiscal matters.

Article 5. Repatriation and Transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly:

a) Of interests, dividends, benefits and other current returns;

b) Of repayments of loans;

c) Of amounts assigned to cover expenses relating to the management of the investment;

d) Of royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters c), d) and e) of this Agreement;

e) Of additional contributions of capital necessary for the maintenance or development of the investment;

f) Of the proceeds of the sale or of the partial or total liquidation of the investment, including capital appreciation.

(2) Transfers shall be effected without delay in freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not imply a rejection or a suspension of such transfer.

Article 6. Expropriation and Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or an equivalent effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation and be freely transferable.

The amount of compensation shall be settled in the convertible currency and paid without undue delay to the person entitled thereto without regard to its residence or domicile. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for completion of transfer formalities.

The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other valuable consideration.

Article 7. More Favourable Provisions

If the domestic law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, 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 this Agreement.

Article 8. Subrogation

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognize the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the investor. The Contracting Party or any agency thereof which is subrogated in the rights of an investor shall be entitled to the same rights as those of the investor and to the extent that they exercise such rights they shall do so subject to the obligations of the investor pertaining to such insured investment.

(2) In the case of subrogation as defined in paragraph (1) above the investor shall not pursue a claim unless authorized to do so by the Contracting Party or any agency thereof.

Article 9. Settlement of Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of the Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by majority of votes.

(7) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

(8) The decisions of the tribunal are final and binding for each Contracting Party.

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within six months from the written request to enter into consultations, the parties to the dispute may proceed as follows:

a) A dispute concerning an obligation under Article 5 and Article 6 of this Agreement shall upon request of the investor be submitted to an arbitral tribunal;

b) In the event of a dispute not referred to in paragraph (2) letter a) of this Article the dispute shall be submitted upon agreement on such submission by both parties to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case. Unless the parties to the dispute have agreed otherwise each of them shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be national of a third State. The arbitrators are to be appointed within two months of the receipt of the request for arbitration and the chairman is to be nominated within further two months.

(4) If the periods specified in paragraph (3) of this Article have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the President is prevented from carrying out the said function or if he is a national of a Contracting Party the provisions in paragraph (5) of Article 10 of this Agreement shall be applied *mutatis mutandis*.

(5) Unless the parties to the dispute have agreed otherwise, the tribunal shall determine its procedure. Its decisions are final and binding. Each Contracting Party shall ensure the recognition and execution of the arbitral judgement.

(6) Each party to the dispute shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and the remaining cost shall be borne in equal parts by both parties to the dispute. The tribunal may, however, in its award decide on a different proportion of costs to be borne by one of the parties and this award shall be binding on both parties.

(7) The Contracting Party which is party to the dispute can, at no time whatever during the settlement procedure or the execution of the sentence, alledge the fact that the investor has received, by virtue of an insurance contract a compensation covering the whole or part of the incurred damage.

(8) In the event of both Contracting Parties having become members of the Convention of 18 March 1965 on Settlement of Investment Disputes between States and Nationals of other States, disputes shall be submitted to the International Center for Settlement of Investment Disputes as follows: disputes referred to in paragraph (2) letter a) of this Article upon request of the investor and disputes referred to in paragraph (2) letter b) of this Article upon agreement of both parties.

Article 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the internal legal requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

IN WITNESS whereof the undersigned, duly authorized hereto, have signed this Agreement.

DONE at Budapest, on the 23rd day of September, 1992 in duplicate, in the English language.

For the Government Republic of Hungary

T. Pongrácz

For the Government of the Republic of Poland

I. Byczewski