

AGREEMENT BETWEEN THE REPUBLIC OF HUNGARY AND THE STATE OF KUWAIT FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Hungary and the State of Kuwait /hereinafter collectively referred to as the Contracting States and each referred to as Contracting State/.

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting State in the territory or maritime zones of the other Contracting State.

Recognizing that the encouragement and reciprocal protection under bilateral agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" shall mean every kind of asset owned or controlled by an investor of a Contracting State and invested in the territory or maritime zones of the other Contracting State in accordance with the laws and regulations of that State, more particularly, though not exclusively:

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

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans and securities issued by a Contracting State or any of its investors and returns retained for the purpose of re-investment;

(c) Debt, service and claims to money or to any performance having economic value associated with an investment;

(d) Rights in the field of intellectual and industrial property such as copyrights, trademarks, patents, industrial designs, know-how, trade secrets, trade names and goodwill;

(e) Any right conferred by law or contract and any licences or permits issued pursuant to law, including rights to prospect, explore, extract, win or utilize natural resources, and rights to manufacture, use and sell the authorised products.

(2) The term "investor" shall mean any natural or juridical person including the Government of a Contracting State who invests in the territory or maritime zones of the other Contracting State.

(3) The term "natural person" shall mean with respect to either Contracting State a natural person holding the nationality of that State in accordance with its laws.

(4) The term "juridical person" shall mean with respect to either Contracting State:

(a) Any entity established in accordance with, and recognized as a juridical person by the law of the Contracting State, such as institutions, development funds, enterprises, agencies, cooperatives, partnerships, corporations, authorities, foundations, companies, firms, establishments, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise;

(b) Legal entities established under the law of any state which are, directly or indirectly, owned or controlled by investors of the Contracting State having their seat with real economic activities in the territory of that Contracting State.

An investor according to this subparagraph may be required to submit proof of such ownership or control in order to be

recognized by the Contracting State in the territory of which the investment has been or is to be made as an investor of the other Contracting State.

(5) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, management, technical assistance or other fee; and payment in kind.

(6) The term "maritime zones" shall mean the marine and submarine zones over which either Contracting State exercises, under international law, sovereignty, sovereign rights or jurisdiction.

(7) The term "associated activities" shall include the organization, control, operation, maintenance and disposition of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business, the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports, in accordance with the laws and regulations of the host State.

Article 2. Encouragement and Protection of Investments

(1) Each Contracting State shall encourage and create favourable conditions for investors of the other Contracting State to make investments in its territory or maritime zones and, in exercise of powers conferred by its laws, shall admit such investments and activities associated therewith.

(2) Once established, investments shall at all times enjoy full protection and security.

(3) Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting State shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.

(4)

(a) Each Contracting State shall maintain measures and legislations for granting appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(b) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host State.

(5) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investment of investors of the other Contracting State.

(6) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation and establishment of the appropriate joint legal entities between the investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.

(7) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with the laws and regulations of the two Contracting States.

(8) Once established, investments shall not be subject in the host State to additional performance requirements which hinder their expansion or maintenance, which require or enforce commitments to sell locally goods produced or which impose any other additional requirements or restrictions which adversely affect these investments in particular.

(9) Each Contracting State shall endeavour to maintain conditions of free competition for investments of investors of the other Contracting State.

(10) Each Contracting State shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting State.

(11) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

Article 3. Most-favoured-nation Provisions

1. Each Contracting State shall in its territory accord to investments and returns of investors of the other Contracting State 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 the most favourable.

(2) Each Contracting State shall in its territory accord to investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable.

Article 4. Exceptions

The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the investors of either Contracting State or of any third State shall not be construed so as to oblige one Contracting State to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, regional economic organization or similar international Agreement to which either of the Contracting States is or may become a party, or

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

Article 5. Compensation for Damage or Loss

(1) When investments, by investors of either Contracting State suffer loss owing to war, other armed conflict, a State of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting State, they shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting State accords to its own investors or to investors of any third State, whichever is the most favourable.

(2) Without prejudice to paragraph (1), investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from 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 damage or loss sustained as a result of the destruction of the property. Resulting payments shall be freely transferable without delay,

(3) In the event that payment of compensation is delayed, it shall include interest at current LIBOR rate.

Article 6. Sequestration and Confiscation

Investments of either Contracting State or any of its investors shall not be subject to sequestration, confiscation or any similar measures save with due process of law.

Article 7. Nationalization or Expropriation

(1)

(a) Investments of either Contracting State or any of its investors shall not be directly or indirectly nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation in the territory of the other Contracting State except for a public purpose in the national interest of that State, for prompt, adequate and just compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application and are not contrary to any undertaking which that State may have given.

(b) Such compensation shall be computed on the basis of the fair market value of the investment immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known and shall be determined in accordance with recognised principles of valuation such as market value. Where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position not less favourable than the position in which he would have been had the compensation been paid immediately on the date of expropriation or nationalization. To achieve this goal the compensation shall include interest at the current LIBOR rate of interest from the date of nationalization or expropriation until the date of payment. The determination of the

amount of compensation, in the absence of agreement being reached between the investor and the host State, shall be referred to arbitration in accordance with Article 11. The amount of compensation finally determined shall be promptly paid to investors in freely convertible currencies and allowed to be freely repatriated without delay.

(c) Where a Contracting State nationalizes or expropriates the investment of a juridical person which is established or licenced under the law in force in its territory and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and just compensation is received and allowed to be repatriated. Such compensation shall be determined and paid in accordance with the provisions of subparagraph (b) of paragraph (1).

(2) The provisions of paragraph (1). shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 8. Transfers

(1) Each Contracting State shall guarantee without delay the transfer out of its territory in any freely convertible currency of:

(a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other returns accruing from any investment by an investor of the other Contracting State;

(b) The proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the other Contracting State;

(c) Funds in repayment of borrowings;

(d) The earnings of nationals of the other Contracting State who are allowed to work in connection with an investment in its territory, in accordance with its laws and regulations;

(e) Amounts spent for the management of the investment in the territory of the Contracting State or a third State; and

(f) Additional funds necessary for the increase or maintenance of the investment.

(2) Without prejudice to the application of Article 3, the Contracting States undertake to accord to transfers referred to in paragraph (1) a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

(3) For the purpose of this Agreement, exchange rates shall be determined in accordance with the official rates agreed to with the International Monetary Fund or, where such rates do not exist, the official exchange rates for Special Drawing Rights or United States Dollars or any other convertible currency agreed upon by the Contracting States.

(4) Such transfers as above shall, however, be subject to such reasonable regulatory procedures as shall, from time-to time, be in force in the host State and shall likewise be subject to the right of the Government of the host State to impose reasonable restrictions for temporary periods not exceeding three months to meet situations of fundamental economic disequilibrium, provided that at least 50% of such transfers are allowed to be repatriated during such periods.

Article 9. Subrogation

(1) If a Contracting State (or its designated Agency) makes payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host State, or has otherwise become subrogated to any of the rights of such investors with respect to such investments, the host State shall recognize;

(a) The right of the other Contracting State (or its designated Agency) arising from, the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) That the other Contracting State (or its designated Agency) is entitled by virtue of subrogation to enforce such right.

(2) If such other Contracting State acquires any amounts in such manner as above, it shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of investors of the host State or of any third State deriving from investment activities similar to those in which the party indemnified was engaged, whichever is the most favourable.

Article 10. Enforcement of Rights

Each Contracting State shall provide effective means of asserting claims and enforcing rights with respect to investment

agreements, investment authorizations and properties.

Article 11. Settlement of Investment Disputes

(1) Any dispute between one Contracting State and an investor of the other Contracting State concerning an investment of that investor in the territory or maritime zones of the former Contracting State shall initially be settled by consultation and negotiation and in accordance with any applicable dispute settlement procedures upon which the parties to the dispute have previously agreed.

(2) If the dispute cannot be settled according to the provisions of paragraph (1) within six months from the date of request for settlement, then the parties to the dispute may proceed as follows:

(a) A dispute concerning Article 7 shall, upon request of the investor, be submitted to the International Centre for Settlement of Investment Disputes instituted by the Convention of Washington of March 18, 1965, on the settlement of investment disputes between States and nationals of other States,

(b) In the event of a dispute not referred to in subparagraph (a) of paragraph (2), the dispute shall be submitted after exhausting all local remedies to the International Centre for Settlement of Investment Disputes.

(3) Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

(4) In case the Convention is not applicable then the dispute shall be settled by an ad hoc arbitration.

Article 12. Settlement of Disputes between Contracting States

(1) Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If the dispute cannot be so settled within six months it shall, upon the request of either Contracting State, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way. Within two months of the receipt of the request for arbitration, each Contracting State shall appoint one member of the Tribunal. The two members shall then select a national of a third State, which has diplomatic relations with the two Contracting States, who shall act as Chairman (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), either Party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State 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 State shall be invited to make the appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States unless the Arbitral Tribunal decides otherwise. The Arbitral Tribunal shall determine its own procedure.

Article 13. Relations between Governments

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 14. 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 States are parties or general international law, nothing in this Agreement shall prevent either Contracting

State or any of its investors who own investments in the territory or maritime zones of the other Contracting State from taking advantage of whichever rules are the most favourable to their cases.

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

Article 15. Consultation

Either Contracting State may propose to the other Contracting State to consult on any matter affecting the operation of this Agreement. The other Contracting State shall afford adequate opportunity for such consultation.

Article 16. Entry Into Force

This Agreement shall be ratified and shall enter into force on the first day of the second month after the exchange of instruments of ratification.

Article 17. Application

This Agreement shall apply to investments made by investors of either Contracting State in conformity with the provisions of the laws of the other Contracting State in its territory from the first of January 1973.

Article 18. Duration and Termination

(1) This Agreement shall remain in force for a period of twenty years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty years from the date of termination of this Agreement.

In witness whereof the undersigned duly authorized thereto have signed this Agreement.

Done in duplicate at Kuwait this 8th day of November 1989 corresponding to 9th day of Rabi II 1410 H in the Hungarian, Arabic and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Republic of Hungary

For the State of Kuwait

PROTOCOL

On signing the Agreement between the Republic of Hungary and the State of Kuwait concerning the Encouragement and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an integral part of the said Agreement.

1. With respect to Article 1

It is understood that investments in Hungary may be embodied in legal entities as required by the then applicable laws.

2. With respect to Article 3

(a) All activities involving the purchase, sale, and transport of raw and secondary materials, energy, fuels, and means of production and operations of all types shall be accorded treatment not less favourable than that accorded to the investment related activities carried out by the investors of the host State or of a third State, whichever is the most favourable. There shall be no impediment to the normal exercise of such activities, provided they are carried out in accordance with the laws, regulations and administrative practices of the host State and in observance of the provisions of this Agreement.

(b) Nationals authorized to work in the territory or maritime zones of one of the Contracting States shall be accorded the appropriate support for the exercise of their professional activities.

(c) The Contracting States shall facilitate in the light of their domestic laws, regulations and administrative practices issuance of entry visas and authorizations pertaining to sojourn, work and travel of the nationals of one Contracting State pursuant to an investment in the territory of the other Contracting State.

3. With respect to Article 7

The provisions of Article 7 shall apply to any direct or indirect measure of expropriation, nationalization or other similar measures such as freezing, blocking of assets, the compulsory sale of all or part of the investment or a measure resulting in loss of or damage to the economic value of such an investment, if the effect of such measure or a series of such other measures would be tantamount to expropriation or nationalization; and including for further examples requisitioning, any impairment, deprivation of management, transfer, use, withdrawal, payment, or control of any sort with respect to such an investment.

4. With respect to Articles 5, 7 and 8

(a) The term "without delay" within the meaning of Articles 5, 7 and 8 is deemed to be fulfilled if a repatriation is made within such period as is normally required according to international financial custom and not later, in any case, than three months.

(b) Invested returns shall enjoy the same facilities and protection as the original investment.

5. With respect to Article 8

The Governments of both Contracting States shall provide sufficient foreign exchange for the transfer of:

(a) The payment for copyrights, trademarks, patents and other industrial property rights, know-how, trade names and technical assistance and technical service related to investments undertaken by investors of the Contracting States;

(b) The proceeds accruing from the total or partial liquidation of any investment made by investors of the Contracting States;

(c) Compensation referred to in Articles 5 and 7;

(d) Returns accruing from investments by investors of either Contracting State where the competent State authority had given specific approval to the investor concerned to sell its products in the domestic market;

(e) The earnings of all employees who are allowed to work in connection with an investment in accordance with local laws and regulations.

It is understood that in all above-mentioned cases, the equivalent of local currency is provided.

6. With respect to Article 11

(1) Regarding the arbitration referred to in paragraph (4) of Article 11 the Arbitral Tribunal shall be established as follows:

(a) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with both Contracting States. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informed the other of its intention to submit the dispute to arbitration.

If the appointments are not made within the period mentioned above, either party may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the required appointment within two months.

(b) The Arbitral Tribunal which shall normally sit and render its award in Sweden may also hear evidence and hold meetings in such other places as it may deem appropriate. The proceedings shall be conducted in the English language provided that, where it deems necessary or conducive to reaching a just decision, the Tribunal may hear any evidence or admit any document in another language. Provided further that in such case the Tribunal shall cause to be made available a reliable

translation in the English language.

(c) The Arbitral Tribunal shall reach its decision by a majority of votes. Its award shall be final and binding on both parties to the dispute, and shall be enforced by both parties to the dispute.

(d) The Arbitral Award shall be made in accordance with the domestic laws, including the rules of conflict of the Contracting State which accepts the investments and in accordance with the provisions of this Agreement as well as the principles of international law generally recognized and adopted by both Contracting States.

(e) Each party to the dispute shall bear the cost of its own arbitrator and of its counsel in the arbitration proceedings. The cost of the Chairman and the remaining costs of the Arbitral Tribunal shall be borne in equal parts by both parties to the dispute, unless the Tribunal decides otherwise.

(2) Investment disputes between the corporations /including State-owned enterprises/ of the Republic of Hungary, and the investors of the State of Kuwait shall be settled by arbitration in accordance with the international arbitration clause between the parties to the dispute.

Done in duplicate at Kuwait this 8th day of November 1989 corresponding to 9th day of Rabi II 1410 H in the Hungarian, Arabic and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Republic of Hungary

For the State of Kuwait