

A G R E E M E N T BETWEEN THE REPUBLIC OF HUNGARY AND BOSNIA AND HERZEGOVINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation on the basis of equality to the mutual benefit of both Contracting Parties,

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

/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 and industrial 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, business concession including the concessions to search for, extract, cultivate or exploit natural resources;

/f/ returns reinvested according to this Agreement.

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 of either Contracting Party who invests in the territory of the other Contracting Party.

/a/ In respect of Bosnia and Herzegovina:

(i) The term "natural person" shall mean any natural person deriving his status as a Bosnia and Herzegovina citizen from the law in force in Bosnia and Herzegovina if he has permanent residence or main place of business in Bosnia and Herzegovina;

(ii) The term "legal person" shall mean any entity established in accordance with the laws in force in Bosnia and Herzegovina, which has its registered seat, central management or main place of business in the territory of Bosnia and Herzegovina.

/b/ In respect of the Republic of Hungary:

(i) The term "natural person" shall mean any natural person having the nationality of the Republic of Hungary in accordance with its laws.

(ii) The term "legal person" shall mean any entity incorporated or constituted in accordance with, and recognized as legal person by the laws of the Republic of Hungary. This term also includes any body of persons having no legal personality of the Republic of Hungary 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, fees or licence fees.

4 . The term "territory" shall mean:

a) In the case of Bosnia and Herzegovina all land territory of Bosnia and Herzegovina, its territorial sea, whole bed and subsoil and air space above, including any maritime area situated beyond the territorial sea of Bosnia and Herzegovina which has been or might in the future be designated under the law of Bosnia and Herzegovina in accordance with international law as an area within which Bosnia and Herzegovina may exercise rights with regard to the seabed and subsoil and the natural resources;

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 the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets provided it is not contrary to the regulations of either of the Contracting Parties.

Article 2. Promotion and Protection of Investments

1 . Each Contracting Party shall encourage and create favourable and transparent 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 and returns 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 to the investors of the other Contracting Party.

2 . Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards expansion, 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 to investors of any third State, whichever is more favourable to the investors of the other Contracting Party.

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 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

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 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 to the investors of the other Contracting Party.

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:

/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 by the other Contracting Party just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property.

Compensation shall include interest at a commercially reasonable rate from the date of occurred losses until the day of payment.

3 . Resulting payments under this Article shall be freely transferable in a 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. Such compensation shall amount to the fair market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge in such a way to effect the value of the investment, whichever is the earlier. The compensation shall include interest at a commercially reasonable rate for current transaction, from the date of expropriation to the date of payment and shall be made without delay to the country designated by the claimants concerned. It shall be effectively realizable and be freely transferable in a freely convertible currency.

2 . The investor affected shall have a right, under the law of the Contracting Party making the expropriation to prompt review, by a judicial or other independent authority of that Party, concerning the legality of his or its case, its process 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. The compensation has to be paid to the company.

4 . The provisions of this Article shall also apply to the returns from an investment.

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 related to an investment;

/d/ royalties or fees;

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

/f/ any compensation or other payment referred to in Articles 4 and 5 of this Agreement;

/g/ payments arising out of the settlement of the disputes;

/h/ the wages or other similar earnings of natural persons engaged from abroad in connection with an investment subject to the laws and regulations of the Contracting Party, in which investments have been made.

2 . For the purpose of this Agreement, exchange rates shall be the rate generally applied and published — in accordance

with the laws of the Contracting Party which has admitted the investment — by the financial institution effecting the transfer unless otherwise agreed.

Article 7. Subrogation

1 . If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or a contract of insurance against non-commercial risk it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize, notwithstanding its rights under Article 9:

/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 Contracting Party or its agency that is subrogated in the rights of an investor shall be, in all circumstances, entitled to the same rights and the same treatment as those of indemnified investor and the same payments due pursuant to those rights and claims.

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 in 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 following the date on which such negotiations were requested in written notification, the investor shall be entitled to submit the case either to:

/a/ the competent court or administrative tribunal 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, in the event both Contracting Parties shall have become a party to this Convention; 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.

3 . The arbitral awards shall be final and binding on both Parties to the dispute and enforced in accordance with the domestic laws of the Contracting Party concerned.

4 . During the arbitral or execution proceedings the neither Contracting Party shall raise the objection that indemnification or other compensation for all or part of the alleged damages has been received by the investor who is the contending party, pursuant to an insurance or guarantee contract against non-commercial risks.

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 of three members, 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 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.

6 . The Tribunal shall issue its decision on the basis of respect for the law, the provisions of this Agreement, as well as of the universally accepted principles of international law.

7 . Subject to other provisions made by the Contracting Parties, the Tribunal shall determine its procedure.

8 . 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 may make a different regulation concerning the costs.

9 . The decisions of the Tribunal are final and binding for each Contracting Parties.

10 . A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 8 and is still before the court. This will not impair the possibility of dispute settlement in accordance with paragraph 1 of this Article.

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. Applicability of this Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its laws and regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement, but shall not apply to any dispute or claim concerning an investment which arose, or which was settled before 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 second notification.

2 . This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods of ten years, 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 this Agreement shall continue to be effective for a period of ten years from the date of termination.

4 . This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering into force of the present Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement

DONE in duplicate at Budapest, this 26th day of September, 2002, in the English language.

For the Republic of Hungary

For Bosnia and Herzegovina