Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hungarian People's Republic for the Promotion and Reciprocal Protection of Investments

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Hungarian People's Republic,

Desiring to intensify their economic co-operation by creating favourable conditions for further investment by investors of either State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of business initiative of investors and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. (a) The term "investment" means every kind of asset connected with economic activities which has been acquired since 31 December 1972 and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares, stocks, bonds and debentures and any other form of participation in a company;

(iii) Claims to money and other assets or to any performance under contract having a financial value;

(iv) Intellectual property rights and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) The rights and obligations of both Contracting Parties with respect to investments made before 31st December 1972 shall be in no way affected by the provisions of this Agreement;

(c) A change in the form in which assets are invested does not affect their character as investments.

2. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

3. The term "investors" means:

(a) In respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom, and corporations, firms and associations constituted or incorporated under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(b) In respect of the Hungarian People's Republic: natural persons having the nationality of the Hungarian People's Republic in accordance with its law, and legal persons constituted in accordance with the law of the Hungarian People's Republic.

4. The term "territory" means:

(a) In respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(b) In respect of the Hungarian People's Republic: the territory of the Hungarian People's Republic.

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 invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

2. Each Contracting Party shall accord at all times fair and equitable treatment to the investments of investors of the other Contracting Party and shall ensure full protection and security for such investment in its territory. Neither Contracting Party shall impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

1. Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no 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 without delay.

Article 5. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 resulting from:

(a) Any existing or future customs union, regional economic organisation, or similar international agreement to which either of the Contracting Parties 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 6. Expropriation

1. Neither Contracting Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Contracting Party in its territory unless the following conditions are complied with:

(a) The expropriation is for a public purpose related to the internal needs of that Party and is subject to due process of law;

(b) The expropriation is non-discriminatory; and

(c) The expropriation is followed by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realisable and be freely transferable. The investor 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, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is constituted or incorporated under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 7. Repatriation of Investment and Returns

1. Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer of a minimum of 20 per cent a year is guaranteed.

2. Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 8. Reference to International Centre for Settlement of Investment Disputes

1. Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for the settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 19651 any legal dispute arising under Article 6 of this Agreement between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is constituted or incorporated under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party. If any such dispute should arise and agreement cannot be reached within three months between the parties to this dispute through pursuit of local remedies or otherwise, then, if the investor affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either Party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the investor affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

2. Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot thus be settled within six months, 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 two 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 on approval by 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 shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal 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. The tribunal may, however, in its decision direct 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. The tribunal shall determine its own procedure.

Article 10. Subrogation

1. If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 12. Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 13. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty days after the date of the second notification. It shall remain in force for a period of ten years.

2. Thereafter the Agreement shall be renewed automatically for successive periods of ten years provided that neither Contracting Party has given notice of termination to the other. Such notice of termination shall be given in writing not later than six months before the date of expiry of the ten year period then current. The Agreement shall terminate upon the expiry of the period of ten years during which notice is given.

3. In respect of investment made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Budapest this ninth day of March 1987 in the English and Hungarian languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

GEOFFREY HOWE

For the Government of the Hungarian People's Republic:

MEDGYESSY PÉTER