

AGREEMENT BETWEEN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF HUNGARY FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify economic co-operation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favourable conditions for investments by 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 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, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.

2. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

b) The term "legal person" shall mean with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws. For the purposes of this Agreement this term also includes any Hungarian body of persons having no legal personality but considered as a company by the laws of the Republic of Hungary.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

4. The term "territory" shall mean:

- in relation to the Republic of Croatia the land and maritime areas, including the seabed and subsoil adjacent to the outer of the territorial sea over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law,

- in relation to the Republic of Hungary the land over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

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 make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments 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.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards 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 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 regional co-operation 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.

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.

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 just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. 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 nondiscriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in freely convertible currency.

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

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 which is owned wholly or partly by investors of the other Contracting Party.

Article 6 TRANSFERS

The Contracting Parties shall guarantee the 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;
- d) royalties or fees;
- e) proceeds of sale or liquidation of the investment;
- f) the earnings of natural persons subject to the laws and regulations of the Contracting Party, in which investments have been made.

2. Transfers shall be effected without delay in a freely convertible currency in the official rate at the date of the transfer unless otherwise agreed.

Article 7 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 validity of 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. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

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 settled peacefully by consultation and negotiation either directly or through diplomatic channels.

2. If such dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

a) the International Centre for Settlement of investment Disputes (ACCEDE) 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 DC on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention; or

b) 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 arbitration award shall be based on,

- the provisions of this Agreement,

- the rules and the universally accepted principles of international law.

4. The arbitration decisions shall be final and binding for the parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

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 by consultation or negotiation through diplomatic channels.

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 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 of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Arbitral Tribunal. These two members shall then select a national of a third State which maintains diplomatic relations with both Contracting Parties who on approval of the two Contracting Parties shall be appointed Chairman of the Arbitral 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. The decision of the Arbitral Tribunal is final and binding for each Contracting Party.

6. 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.

7. The Arbitral Tribunal shall determine its own procedure.

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

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations, prior or after its entry into force, but they shall not apply to any dispute arisen before its entry into force.

Article 12

ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Contracting Parties shall notify each other through diplomatic channels that their internal legal requirements for the entry into force of this Agreement have been complied with. This Agreement shall enter into force on the date of receipt of the second notification.

2. This Agreement shall remain in force indefinitely but either Contracting Party may, after the expiration of a period of 10 years from the date of its entry into force, notify in writing,

through diplomatic channels, the 'other Contracting Party of its intention to denounce this Agreement.

In that case, this Agreement is denounced one year after the date of receipt of the notice of denunciation.

3. In respect of investments made prior to the denunciation of this Agreement, the provisions of this Agreement shall continue to be effective for a period of twenty years from the date on which the notice of denunciation became effective.

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

DONE in two originals, at 15.5.1996, this 15th day of May 1996 in the, Croatian, Hungarian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF HUNGARY

FOR THE REPUBLIC OF CROATIA