

Agreement between the Kingdom of the Netherlands and the Hungarian People's Republic for the encouragement and reciprocal protection of Investments

The Government of the Kingdom of the Netherlands

and

the Government of the Hungarian People's Republic

Desiring to intensify economic cooperation to the mutual benefit of both countries, Intending to create favourable conditions for investments by investors of either Party in the territory of the other Party and

Recognizing that encouragement and protection of investments on the basis of the present Agreement stimulates the initiative in this field,

Have agreed as follows:

Article 1

For the purposes of the present Agreement:

- (a) the term 'investments' shall comprise every kind of asset connected with the participation in companies and joint ventures, more particularly, though not exclusively:
 - i. movable and immovable property as well as any other rights in rem in respect of every kind of asset;
 - ii. rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
 - iii. title to money, goodwill and other assets and to any performance having an economic value;
 - iv. rights in the field of intellectual property, technical processes and know-how;
 - v. rights granted under public law, including rights to prospect, explore, extract and win natural resources.
- (b) the term 'investor' shall comprise with regard to either Contracting Party:
 - i. natural persons having the nationality of that Contracting Party in accordance with its law;
 - ii. legal persons constituted in accordance with the law of that Contracting Party.
- (c) the term 'owned or controlled' shall comprise ownership or control that is direct, or indirect through subsidiaries or affiliates located in the territory of either Contracting Party.

Article 2

Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its provisions of law. The present Agreement shall apply to investments owned or controlled by investors of either Contracting Party in conformity with the provisions of law of the other Contracting Party in its territory from the first January 1973.

Article 3

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.
- 2) More particularly, each Contracting Party shall accord to such investments full physical security and protection which in any case shall not be less than that accorded either to investments of its own nationals or to investments of investors of any third State, whichever is more favourable to the investor.
- 3) If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such

Jurisdiction

- › Hungary
- › Netherlands

Legis in effect

- › 1 June 1988

Legislation date

- › 2 September 1987

Topics

- › Investment Arbitration

Source

- › **Agreement between the Kingdom of the Netherlands and the Hungarian People's Republic for the encouragement and reciprocal protection of Investments**, Supplied by the Research Staff at the Penn State Institute of Arbitration,

advantages to investors of the other Contracting Party.

4) The treatment granted under the present Article shall not extend to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting Party to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation, or on the basis of reciprocity with a third State.

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

Article 4

1) Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

- (a) the measures are taken in the public interest and under due process of law;
- (b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- (c) the measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

2) Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, state of emergency, revolt or riot, shall be accorded treatment no less favourable by such other Contracting Party than that Party accords to investors of any third State as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable between the two Contracting Parties.

Article 5

The Contracting Parties shall guarantee the transfer of payments related to an investment. The transfers shall be made in a freely convertible currency, without undue restriction and delay. Such transfers 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.

Article 6

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or reinsurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 7

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 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 the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 8

Either Contracting Party may propose the other Party to consult on any matter affecting the operation of the present Agreement. The other Party shall accord sympathetic consideration to and shall accord adequate opportunity for such consultation.

Article 9

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement shall as far as possible be settled by the Governments of the two Contracting Parties.

- 2) If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
- 3) The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
- 4) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within the specified period, the other Party may invite the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach an agreement, in the specified period, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.
- 5) If, in the cases provided for in the fourth paragraph of the present Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.
- 6) The arbitral tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the universally acknowledged rules and principles of international law.
- 7) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
- 8) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.
- 9) Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be borne in equal parts by the Contracting Parties.

Article 10

- 1) Any dispute between either Contracting Party and the investor of the other Contracting Party concerning expropriation or nationalization of an investment shall as far as possible be settled by the disputing Parties in an amicable way.
- 2) If such disputes cannot be settled, within six months from the date either Party requested amicable settlement, it shall upon request of either disputing party be submitted to an arbitral tribunal. In this case the provisions of paragraphs 3-9 of Article 9 shall be applied *mutatis mutandis*. Nevertheless the President of the Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm shall be invited to make the necessary appointments.
- 3) In case both Contracting Parties have become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of the Other States, disputes between either Contracting Party and the investor of the other Contracting Party under the first paragraph of the present Article shall be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes.

Article 11

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe and to Aruba, unless the notification provided for in Article 12, paragraph 1 provides otherwise.

Article 12

- 1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefore in their respective countries have been complied with, and shall remain in force for a period of 15 years.
- 2) Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of 10

years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

4) Subject to the period mentioned in paragraph 2 of the present Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of one of the parts of the Kingdom.

DONE in duplicate at [place] on [date], in the English language.

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