

# 1989. évi 7. törvényerejű rendelet

## a Nemzetközi Beruházásbiztosítási Ügynökség létrehozásáról szóló, Szöulban, 1985. október 11-én kelt Egyezmény kihirdetéséről<sup>1</sup>

Hatályos: 2007. 01. 01. –

(A Magyar Népköztársaság Elnöki Tanácsa megerősítő okiratának letétele a Nemzetközi Újjáépítési és Fejlesztési Banknál, 1988. április 21-én megtörtént. Az Egyezmény 61. cikkében megkívánt feltételek teljesülése következtében az Egyezmény 1988. április 12-én hatályba lépett.)

1. § A Magyar Népköztársaság Elnöki Tanácsa a Nemzetközi Beruházásbiztosítási Ügynökség létrehozásáról szóló, Szöulban, 1985. október 11-én kelt Egyezményt e törvényerejű rendelettel kihirdeti.<sup>2</sup>

2. § Az 1. §-ban említett Egyezmény eredeti angol szövege, illetve hivatalos magyar nyelvű fordítása a következő:

### CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

#### PREAMBLE

The Contracting States

*Considering* the need to strengthen international cooperation for economic development and to foster the contribution to such development of foreign investment in general and private foreign investment in particular;

*Recognizing* that the flow of foreign investment to developing countries would be facilitated and further encouraged by alleviating concerns related to non-commercial risks;

*Desiring* to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their development needs, policies and objectives, on the basis of fair and stable standards for the treatment of foreign investment;

*Convinced* that the Multilateral Investment Guarantee Agency can play an important role in the encouragement of foreign investment complementing national and regional investment guarantee programs and private insurers of non-commercial risk; and

*Realizing* that such Agency should, to the extent possible, meet its obligations without resort to its callable capital and that such an objective would be served by continued improvement in investment conditions,

*Have Agreed* as follows:

#### CHAPTER I

##### Establishment, Status, Purposes and Definitions

###### Article 1.

###### *Establishment and Status of the Agency*

a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the Agency).

b) The Agency shall possess full juridical personality and, in particular, the capacity to:

(i) contract;

(ii) acquire and dispose of movable and immovable property; and

(iii) institute legal proceedings.

###### Article 2.

###### *Objective and Purposes*

The objective of the Agency shall be to encourage the flow of investments for productive purposes among member countries, and in particular to developing member countries, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter referred to as the Bank), the International Finance Corporation and other international development finance institutions.

To serve its objective, the Agency shall:

- a) issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries;
  - b) carry out appropriate complementary activities to promote the flow of investments to and among developing member countries; and
  - c) exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.
- The Agency shall be guided in all its decisions by the provisions of this Article.

### *Article 3.*

#### *Definitions*

For the purposes of this Convention:

- a) Member” means a State with respect to which this Convention has entered into force in accordance with Article 61.
- b) Host country” or host government” means a member, its government, or any public authority of a member in whose territories, as defined in Article 66, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.
- c) A developing member country” means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the Council of Governors referred to in Article 30 (hereinafter called the Council).
- d) A special majority” means an affirmative vote of not less than two-thirds of the total voting power representing not less than fifty-five percent of the subscribed shares of the capital stock of the Agency.
- e) A freely usable currency” means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 30 (hereinafter called the Board) may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

## **CHAPTER II**

### **Membership and Capital**

#### *Article 4.*

##### *Membership*

- a) Membership in the Agency shall be open to all members of the Bank and to Switzerland.
- b) Original members shall be the States which are listed in Schedule A hereto and become parties to this Convention on or before October 30, 1987.

#### *Article 5.*

##### *Capital*

- a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR 1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR 10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period January 1, 1981 to June 30, 1985, such value being 1.082 United States dollars per SDR.
- b) The capital stock shall increase on the admission of a new member to the extent that the then authorized shares are insufficient to provide the shares to be subscribed by such member pursuant to Article 6.
- c) The Council, by special majority, may at any time increase the capital stock of the Agency.

#### *Article 6.*

##### *Subscription of Shares*

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in no event at an issue price of less than par. No member shall subscribe to less than fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

#### *Article 7.*

##### *Division and Calls of Subscribed Capital*

The initial subscription of each member shall be paid as follows:

(i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten percent of the price of each share shall be paid in cash as stipulated in Section *a*) of Article 8 and an additional ten percent in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.

(ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

#### *Article 8.*

##### *Payment of Subscription of Shares*

*a*) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five percent of the paid-in cash portion of their subscriptions payable under Article 7 (i).

*b*) Calls on any portion of unpaid subscriptions shall be uniform on all shares.

*c*) If the amount received by the Agency on a call shall be insufficient to meet the obligations which have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

*d*) Liability on shares shall be limited to the unpaid portion of the issue price.

#### *Article 9.*

##### *Valuation of Currencies*

Whenever it shall be necessary for the purposes of this Convention to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Agency, after consultation with the International Monetary Fund.

#### *Article 10.*

##### *Refunds*

*a*) The Agency shall, as soon as practicable, return to members amounts paid on calls on subscribed capital if and to the extent that:

(i) the call shall have been made to pay a claim resulting from a guarantee or reinsurance contract and thereafter the Agency shall have recovered its payment, in whole or in part, in a freely usable currency; or

(ii) the call shall have been made because of a default in payment by a member and thereafter such member shall have made good such default in whole or in part; or

(iii) the Council, by special majority, determines that the financial position of the Agency permits all or part of such amounts to be returned out of the Agency's revenues.

*b*) Any refund effected under this Article to a member shall be made in freely usable currency in the proportion of the payments made by that member to the total amount paid pursuant to calls made prior to such refund.

*c*) The equivalent of amounts refunded under this Article to a member shall become part of the callable capital obligations of the member under Article 7 (ii).

### CHAPTER III

#### **Operations**

## *Article 11.*

### *Covered Risks*

*a)* Subject to the provisions of Sections *b)* and *c)* below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risk:

*(i) Currency Transfer*

any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer;

*(ii) Expropriation and Similar Measures*

any legislative action or administrative action or omission attributable to the host government which has the effect, of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories;

*(iii) Breach of Contract*

any repudiation or breach by the host government of a contract with the holder of a guarantee, when *a)* the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or *b)* a decision by such forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or *c)* such a decision cannot be enforced; and

*(iv) War and Civil Disturbance*

any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.

*b)* Upon the joint application of the investor and the host country, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in Section *a)* above, but in no case to the risk of devaluation or depreciation of currency.

*c)* Losses resulting from the following shall not be covered:

*(i)* any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and

*(ii)* any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

## *Article 12.*

### *Eligible Investments*

*a)* Eligible investments shall include equity interests, including medium- or long-term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.

*b)* The Board, by special majority, may extend eligibility to any other medium- or long-term form of investment, except that loans other than those mentioned in Section *a)* above may be eligible only if they are related to a specific investment covered or to be covered by the Agency.

*c)* Guarantees shall be restricted to investments the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include:

*(i)* any transfer of foreign exchange made to modernize, expand, or develop an existing investment; and

*(ii)* the use of earnings from existing investments which could otherwise be transferred outside the host country.

*d)* In guaranteeing an investment, the Agency shall satisfy itself as to:

*(i)* the economic soundness of the investment and its contribution to the development of the host country;

*(ii)* compliance of the investment with the host country's laws and regulations;

*(iii)* consistency of the investment with the declared development objectives and priorities of the host country; and

*(iv)* the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

## *Article 13.*

### *Eligible Investors*

*a)* Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that:

*(i)* such natural person is a national of a member other than the host country;

(ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or nationals thereof, provided that such member is not the host country in any of the above cases; and

(iii) such juridical person, whether or not it is privately owned, operates on a commercial basis.

b) In case the investor has more than one nationality, for the purposes of Section a) above the nationality of a member shall prevail over the nationality of a non-member, and the nationality of the host country shall prevail over the nationality of any other member.

c) Upon the joint application of the investor and the host country, the Board, by special majority, may extend eligibility to a natural person who is a national of the host country or a juridical person which is incorporated in the host country or the majority of whose capital is owned by its nationals, provided that the assets invested are transferred from outside the host country.

#### *Article 14.*

##### *Eligible Host Countries*

Investments shall be guaranteed under this Chapter only if they are to be made in the territory of a developing member country.

#### *Article 15.*

##### *Host Country Approval*

The Agency shall not conclude any contract of guarantee before the host government has approved the issuance of the guarantee by the Agency against the risks designated for cover.

#### *Article 16.*

##### *Terms and Conditions*

The terms and conditions of each contract of guarantee shall be determined by the Agency subject to such rules and regulations as the Board shall issue, provided that the Agency shall not cover the total loss of the guaranteed investment. Contracts of guarantee shall be approved by the President under the direction of the Board.

#### *Article 17.*

##### *Payment of Claims*

The President under the direction of the Board shall decide on the payment of claims to a holder of a guarantee in accordance with the contract of guarantee and such policies as the Board may adopt. Contracts of guarantee shall require holders of guarantees to seek, before a payment is made by the Agency, such administrative remedies as may be appropriate under the circumstances, provided that they are readily available to them under the laws of the host country. Such contracts may require the lapse of certain reasonable periods between the occurrence of events giving rise to claims and payments of claims.

#### *Article 18.*

##### *Subrogation*

a) Upon paying or agreeing to pay compensation to a holder of a guarantee, the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and other obligors. The contract of guarantee shall provide the terms and conditions of such subrogation.

b) The rights of the Agency pursuant to Section a) above shall be recognized by all members.

c) Amounts in the currency of the host country acquired by the Agency as subrogee pursuant to Section a) above shall be accorded, with respect to use and conversion, treatment by the host country as favorable as the treatment to which such funds would be entitled in the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the