

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE MUTUAL PROMOTION AND GUARANTEE OF INVESTMENTS

The Government of the Republic of Ghana and the Government of the Socialist Republic of Romania, hereinafter referred to as "the Contracting Parties";

Desiring to develop further the relations of economic co-operation existing between the two States;

Determined to create favourable conditions for investments of capital which shall be made by investors from the Republic of Ghana in the territory of Socialist Republic of Romania and by investors of the Socialist Republic of Romania in the territory of the Republic of Ghana;

Recognising that the guarantee of investments of capital, in accordance with this Agreement, will stimulate such initiative.

Have agreed as follows:

Article 1. Promotion and Guarantee of Investments

(1) Each Contracting Party shall promote in its territory investments of capital by investors from the other Contracting Party.

(2) Investments admitted in accordance with the legal provisions of the Contracting Party in the territory of which the investments are made, shall enjoy the protection and guarantee laid down in the present Agreement.

Article 2. Definitions

(1) "Investment of capital" means participation or contribution of any kind to any economic enterprise or undertaking, including all goods and financial means of the participants in an investment, as well as any increase of value and in particular, but not exclusively:

- a. Shares or any other forms of participation in companies incorporated in the territory of one Contracting Party;
- b. Profits reinvested, claims to money or other rights relating to services having a financial value;
- c. Goods, movable and immovable, as well as any other property rights such as mortgages, privileges, guarantees and any other similar rights as defined in accordance with the law of the Contracting Party in the territory of which the goods in question are situated;
- d. Industrial property rights, trade marks, intellectual rights and any other similar rights; and
- e. Concessions conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) "Returns" means the amounts yielded by an investment as dividends, earning quotas and other income.

(3) "Investors" means:

- a. In respect of the Republic of Ghana, nationals, state corporations and agencies, and companies registered under the laws of Ghana which invest or trade abroad.
- b. In respect of the Socialist Republic of Romania, Romanian economic units having legal personality and which, under the law, are entitled to trade abroad or undertake international economic co-operation activities.

Article 3. Most Favoured Nation Treatment

(1) Neither Contracting Party shall in its territory subject investors of the other Contracting Party or their investments of capital and returns to treatment less favourable than that which it accords to investors of any third state or to their investments of capital and returns.

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

(3) The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to investors of any third state shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party:

a. The benefit of any treatment, preference or privilege resulting from any existing or future economic union or customs union, a free trade area or an economic organisation of a regional nature to which either of the Contracting Parties is or may become a party;

b. The benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or

c. The benefit of any treatment, preference or privilege accorded by one Contracting Party exclusively to its state institutions.

Article 4. Expropriation

(1) Investments 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 where:

a. The measures are adopted for a public purpose related to its internal needs and under due process of law;

b. The measures shall be accompanied by provision for the payment of appropriate compensation. The compensation shall correspond to the value of the investment on the date of expropriation;

c. The compensation shall be effectively realisable and freely transferable and such transfer shall be made without undue delay.

(2) The amount of compensation shall be subject to review by due process of law within the jurisdiction of the Contracting Party where the investment has been made.

(3) If a dispute between an investor and the Contracting Party in the territory of which the investment has been made regarding the amount of compensation continues to exist after the final decision of the national tribunals or any other competent authority, either of them shall be entitled to submit the dispute for international conciliation or arbitration within two months after the exhaustion of domestic remedies.

(4) Subject to the choice of the aggrieved party the dispute shall be referred either to:

a. The International Centre for the Settlement of Investment Disputes, in accordance with procedure provided for in the Convention opened for signature at Washington on 18th March 1965; or

b. In accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party 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 investors of any third state. Resulting payments shall be freely transferable.

Article 6. Repatriation of Capital and Returns

(1) Each Contracting Party shall guarantee in respect of the investment of capital, to the investors of the other Contracting Party, the transfer:

- a. Of the invested capital or the proceeds of the total or partial liquidation or alienation of the investment;
- b. Of the realised profits and other proceeds arising from the investment of capital;
- c. Of the payments made for the reimbursement of the credits for investments and interests due; and
- d. Of an agreed percentage of the earnings of the citizens who are allowed to work in an investment unit placed in the territory of the other Contracting Party

(2) Each Contracting Party shall issue to the investors after fulfilment of their legal obligations, the necessary licences, in order to ensure the execution without undue delay of the transfers mentioned in Paragraph 1 of this Article.

Article 7. Subrogation

If one of the Contracting Parties, under a guarantee given for an investment carried out in the territory of the other Contracting Party, makes payments to its own investors, it is subrogated in the rights, obligations and actions of said investors. The subrogation in the rights and obligations of the ensured investor extends also to the rights of transfer mentioned in the above Articles 4, 5 and 6. The paying Contracting Party shall not be entitled to obtain rights or to assume obligations greater than those of the ensured investor.

Article 8. Transfers of Currency

(1) Transfers of currency pursuant to Articles 4, 5 and 6 shall be effected without undue delay in the convertible currency in which the investment of capital was carried out or in any other convertible currency if so agreed, at the rate of exchange in force at the date of transfer.

(2) "Without undue delay" in Paragraph 1 of this Article means the transfers which are made within a period normally required to prepare the formalities of transfer.

Article 9. Existing Investments

Existing Investments by investors of one Contracting Party in the territory of the other Contracting Party shall also be subjected to the provisions of this Agreement upon its entry into force.

Article 10.: Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations between the two Parties. If such a dispute cannot be settled within six months after the commencement of negotiations, then upon the request of one of the Contracting Parties the dispute shall be submitted to an arbitral tribunal.

(2) The arbitral tribunal shall be constituted in the following way: each Contracting Party shall appoint one arbitrator; the two arbitrators shall, by mutual agreement, propose to both Parties, a Chairman who shall be a citizen of a third state, for appointment by the Two Contracting Parties. The arbitrators shall be appointed within three months and the Chairman within five months after one of the Contracting Parties notified the other that it intends to submit the dispute to an arbitral tribunal. If arbitrators shall not be appointed within the agreed period, the Contracting Party failing to appoint its arbitrator shall agree that the Secretary General of the United Nations makes the necessary appointment. If the two Contracting Parties are unable to reach agreement on the appointment of the Chairman, they shall likewise agree that he be appointed by the Secretary General of the United Nations.

(3) The arbitral tribunal shall issue its awards on the basis of the provisions of this Agreement and other Agreements concluded between the Contracting Parties as well as on the principles and rules of International Public Law. The arbitral tribunal shall reach its decisions by a majority of votes and its decisions shall be final and binding. Only the two Contracting Parties shall have the right to refer suits to the arbitral tribunal and participate in the proceedings.

(4) Each Contracting Party shall bear the costs of the arbitrator it has appointed and those made by its representatives in the tribunal proceedings. The costs of the Chairman and the other cost shall be borne equally by the Contracting Parties.

(5) The arbitral tribunal shall determine its own procedure.

Article 11. Entry Into Force, Duration and Termination

(1) This Agreement shall be ratified according to the Constitutional procedures of each country and instruments of ratification shall be exchanged as soon as possible.

(2) The Agreement shall come into force thirty (30) days after the exchange of instruments of ratification. It shall remain in force for a period of ten (10) years and thereafter shall be extended for further periods of ten (10) years, unless written notice of denunciation has been given by one of the Contracting Parties, a year before the expiry. After the expiry of the initial period of ten (10) years, the Agreement can be denounced at any time through diplomatic channels with one year written notice.

(3) In respect of investments of capital made prior to the date of expiry of the Agreement, its provisions shall continue to apply for ten (10) years beginning with the date of its expiry.

Signed at Acra on 14th September 1989, in two original copies, in the Romanian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF GHANA

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA