

AGREEMENT BETWEEN THE GOVERNMENT OF ROMANIA AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Slovenia and the Government of Romania (hereinafter referred to as the "Contracting Parties")

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

(a) Natural persons who have citizenship of the Contracting Party, according to its laws;

(b) Legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat in the territory of that Contracting Party.

(2) The term "investment" shall mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with its laws and regulations, and include in particular, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges; in rem, such as servitudes, mortgages, liens, pledges;

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

(c) Claims to money or a claim to performance having an economic value and associated with an investment;

(d) Intellectual property rights including rights with respect to copyright, patents, industrial designs or models, trade or service marks, trade names, know-how and goodwill, as well as other similar rights recognized by the laws of the Contracting Parties;

(e) Concessions conferred by law, contract or any decision of the authorities in accordance with the law to undertake economic activity and having economic value including the right to search, cultivate, extract or exploit natural resources.

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

(3) The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, capital gains, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

(4) The term "territory" shall mean the territory of each Contracting Party, including the territorial sea and the exclusive economic zone over which the State concerned exercises sovereignty, sovereign rights and jurisdiction in accordance with national and international law.

Article 2. Promotion and Protection

(1) Each Contracting Party shall in its territory promote as far as possible investments made by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Once a Contracting Party has admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits required for such an investment.

(3) Each Contracting Party shall protect investments made by investors of the other Contracting Party in accordance with its laws and regulations. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, disposal or liquidation of investments.

Article 3. Treatment

(1) Each Contracting Party shall ensure fair and equitable treatment within its territory to investments and returns of investors of the other Contracting Party. This treatment shall be in no case less favourable than that which, in like circumstances, the Contracting Party grants to its own investors or investors of any third State, whichever is more favourable.

(2) The provision of this Agreement relating to granting of the most favoured nation treatment shall not be construed so as to oblige one Contracting Party to extend to the investments and investors of the other Contracting Party the advantages resulting from:

(a) Any existing or future customs or economic union, free trade area or similar regional economic agreement to which either Contracting Party is or becomes a party;

(b) The provisions of a double taxation or other agreements regarding matters of taxation with a third State.

Article 4. Transfers

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall permit the transfer freely of payments relating to investments, including:

(a) The initial capital and any additional contribution to capital for the maintenance and development of an investment;

(b) Returns;

(c) Funds in repayment of loans related to an investment;

(d) Proceeds from the sale or liquidation of all or any part of an investment;

(e) Compensation pursuant to Article 5 of this Agreement; Article 5 of this Agreement;

(f) Earnings of citizen of the other Contracting Party who are employed and allowed to work in connection with investments in its territory.

(2) After the fulfilment of the financial obligations pertaining to an investment, transfers shall be made without delay, unless otherwise agreed with the investor. Transfers shall be made in the currency in which the investment was originally made or in any convertible currency agreed by the investor and the Contracting Party concerned, and shall be made at the market rate of exchange applicable on the date of transfer.

The transfers shall be made pursuant to laws and regulations relating to procedure of each Contracting Party.

For the purposes of this paragraph, transfers without delay means transfer within a period not exceeding six months.

(3) Each Contracting Party shall grant transfers treatment in accordance with Article 3 of this Agreement. Article 3 of this Agreement.

Article 5. Expropriation and Compensation

(1) Neither Contracting Party shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having equivalent effect (hereinafter referred to as "expropriation") against investment made in its territory by an investor of the other Contracting Party, unless the measures are taken in the public interest, on a nondiscriminatory basis,

under due process of law and against prompt, effective and adequate compensation. Such compensation shall be based on the market value of the investment expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier. It shall be payable from the date of expropriation with interest calculated on a six month LIBOR basis until the date of payment and shall be paid without delay and shall be freely transferable.

(2) The investor of one Contracting Party whose investment suffers losses due to war or any other armed conflict, revolution, state of emergency or rebellion shall be accorded treatment in accordance with Article 3 of this Agreement. The investor shall be, irrespective of the circumstances, entitled to compensation. Article 3 of this Agreement. The investor shall be, irrespective of the circumstances, entitled to compensation.

Article 6. Pre-agreement Investments

This Agreement shall also apply to investments existing at the time of its entry into force. However, it shall not apply to disputes that have arisen before its entry into force.

Article 7. Other Obligations

(1) If the legislation of one Contracting Party entitles the investment of an investor of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall, to the extent that it is more favourable, prevail over this Agreement.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments made in its territory by investors of the other Contracting Party.

Article 8. Subrogation

(1) If one Contracting Party or its designated agency makes a payment to its own investor under any financial guarantee against non-commercial risks it has granted in regard of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize, by virtue of the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or its designated agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

(2) Where a Contracting Party has made a payment to its investor and has taken over the rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Contracting Party making the payment, pursue those rights and claims against the other Contracting Party.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute which may arise between a Contracting Party and an investor of the other Contracting Party relating to an investment shall, as far as possible, be settled amicably.

(2) If the dispute can not be settled amicably within six months from the date of request of settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, done at Washington, on March 18, 1965; or Convention on the Settlement of Investment Disputes between States and Nationals of the other States, done at Washington, on March 18, 1965; or

(c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration. All arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall enforce the arbitral award in its territory.

(4) 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, its immunity or the fact that the investor which is the other party to the dispute has received or will receive compensation under an insurance contract for all or part of its alleged damage or loss.

Article 10. Settlement of Disputes between Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channels.

(2) If Contracting Parties cannot reach an agreement within six months from the date of request for settlement the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members.

(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 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 the necessary appointments have not been made within the periods specified in paragraph (3) of this Article, 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 citizen 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 citizen of either Contracting Party or if he is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a citizen 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. 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 remaining costs shall be borne in equal parts by the Contracting Parties.

(6) Subject to the provisions of this Article, the tribunal shall determine its own procedure.

(7) The decisions of tribunal are final and binding on both Contracting Parties.

Article 11. Consultations

The representatives of the two Contracting Parties shall hold meetings, when necessary, for the purpose of:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging legal information and investment opportunities;
- (c) Exchanging views with respect to disputes in connection with investments;
- (d) Forwarding proposals on promotion of investments;
- (e) Studying other issues in connection with investments.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty days after the date on which the Contracting Parties shall have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for an initial period of ten years. Thereafter it shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of the intention to terminate it. The termination of this Agreement shall become effective one year after the notice of termination has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 11 shall remain in force for a further period of ten years. Article 1 to 11 shall remain in force for a further period of ten years.

IN WITNESS THEREOF the Undersigned, being duly authorized by their respective Governments, have signed this Agreement

Done at Ljubljana, on 24 January, 1996, in two originals, in Slovene, Romanian and English languages, all texts being equally authentic. In case of difference of interpretation, the English text shall prevail.

For the Government of Romania

Alexandru Stanescu (s)

For the Government of the Republic of Slovenia

Janko Deželak (s)

For the Government of Romania

Alexandru Stanescu (s)