

# **Agreement concerning the encouragement, promotion and the guarantee of investments between the Government of the Gabonese Republic and the Government of the Socialist Republic of Romania.**

The Government of the Gabonese Republic on the one hand, and

The Government of the Socialist Republic of Romania on the other hand,

Hereinafter referred to as the "contracting parties",

Desiring to develop economic cooperation relations between the two States.

For the purpose of build favourable conditions for investments by investors of the Gabonese Republic on the territory of the Socialist Republic of Romania and investors of the Socialist Republic of Romania in the territory of the Republic Gabonaise

Recognizing that the investment guarantee pursuant to this Agreement, is likely to stimulate initiatives in this field,

Have agreed as follows:

## **Article 1. Encouragement, Promotion and Guarantee of Investments**

(1) Each Contracting Party undertakes to encourage and promote investments in its territory by investors of the other contracting party.

(2) Direct and indirect investments admitted in accordance with the legal provisions in force in the territory of the Contracting Party where the investments were made shall enjoy the full protection and guarantees provided in this Agreement.

## **Article 2. Definitions of the Terms In this Agreement**

(1) "Investment" means any direct or indirect involvement or participation of any kind to any company or economic activity and covers all goods including economic and financial capacity of participants to investment and any increase in value and in particular, though not exclusively:

- a) The actions, shares or any kind of participation in companies formed in the territory of a Contracting Party
- b) Reinvested earnings, the rights of claim or other rights relating to financial services having a financial value;
- c) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, guarantees and any other similar rights as defined in conformity with the law in force in the territory of the Contracting Party where the property is located;
- d) Intellectual property rights, technical processes, trade marks, copyrights and other similar intangible rights.

(2) "Returns" any means payments arising from an investment in the form of dividends and other income;

(3) "Investors" means:

- a) For the Gabonese Republic is any natural or legal person having the nationality of Gabon in accordance with the laws in force.
- b) For the Socialist Republic of Romania are the Romanian economic units having legal personality and which, according to the law, have foreign commercial functions and economic cooperation abroad

(4) For the purposes of this Agreement:

a) The term "direct participations" refers to the investments made by an investor of a Contracting Party in a company or business located in the territory of the other contracting party.

b) The term "indirect participation" refers to the investments made by a company which has seat in the territory of a Contracting Party in another company or economic activity located in the same territory, when the first company has been constituted with the participation in the capital of one investor of the other contracting party.

### **Article 3. Most-favoured Nation Treatment**

(1) Each Contracting Party does not grant, within its territory, to investments or investors of the other Contracting Party, a less favourable treatment than that accorded to investments and investors of third countries.

(2) If the legislation of either Contracting Party or existing international obligations or to be performed in the future by the Contracting Parties in addition to this Agreement, is a regulation that grants a more favourable treatment to investments and investors of the other contracting party than that provided for in this Agreement, such regulations will be applicable.

### **Article 4. Other Reciprocal Obligations**

(1) Each Contracting Party shall observe any other obligation assumed regarding to investments made in its territory by investors of the other contracting party.

(2) Each Contracting Party shall encourage, at the request of the other contracting party to its own investors with a view to maintaining and continuation of investments made in the territory of the other contracting party, within the framework of cooperation projects identified as priorities.

### **Article 5. Expropriation and Compensation**

(1) The investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or subjected to any other measures having similar effect, unless the following conditions are met:

a) The measures are taken in the public interest and under due process;

b) They are non-discriminatory;

c) An adequate procedure is laid down to calculate the amount and terms of payment of compensation.

The compensation shall correspond to the market value of the investment at the date of the expropriation. Such compensation shall be effectively feasible and freely transferable and shall be paid without delay.

(2) The disputes between an investor and the contracting Partie on the territory of which the investment has been made on the amount of compensation shall be in the absence of such agreement subject to the competent courts of the country in which the investment has been made. If disagreement persists after the exhaustion of domestic remedies, the dispute shall be submitted to conciliation or arbitration to the International Centre for Settlement of Investment Disputes in accordance with the procedure laid down by the Convention opened for signature in Washington March 18, 1965.

(3) Investors of one Contracting Party whose investments have suffered losses during a war or other armed conflict or a state of national emergency, in the territory of the other contracting party benefit, on the part of this latter, with respect to restitution, compensation or other indemnities, which are not less favourable than those accorded to investors of any other third State. The amounts relating to compensation shall be freely transferable.

### **Article 6. Repatriation of Capital and Profits**

(1) Each Contracting Party shall, in respect to investments by investors of the other contracting party, the free transfer in the currency used for the achievement of the investment or any other convertible currency agreed:

a) The capital invested or the proceeds of the total or partial liquidation or disposal of investment;

b) Of profits and other income from investment;

c) Payments made for the reimbursement of the credits for investments and interests;

d) The earnings of nationals allowed to work in connection with an investment made in the territory of the other contracting party;

e) The compensation referred to in paragraph 5 above.

(2) Each Contracting Party shall, after the fulfilment of the legal obligations of investors, the required authorisations to ensure the execution, without delay of transfers referred to paragraph 1 of this article.

(3) The transfers shall be made at the rate of exchange prevailing on the date of transfer.

(4) Without delay according to paragraph 2 means the transfers are made within the period normally necessary for the preparation of the transfer formalities. the period shall run from the day on which the request and the necessary documents were submitted to the appropriate authorities

This period shall in no case exceed three months.

## **Article 7. Subrogation**

If one of the contracting parties pursuant a guarantee given in respect of an investment made in the territory of the other contracting party makes payment to its own investors it is thereby entered into the rights, obligations and actions of such investors. The rights and obligations of the subrogation of the covered investor shall also apply to the transfer of rights referred to in articles 5 and 6 above, the Contracting Party that had made the transfer may not take back rights or obligations more extensive as those of the covered investor.

## **Article 8. Existing Investments**

The investments which the investors of one Contracting Party made in the territory of the other contracting party prior to the entry into force of this Agreement shall also be subject to the provisions of this Agreement

## **Article 9. Disputes between the Contracting Parties**

(1) The disputes between the contracting parties relating to the interpretation and application of this Agreement shall be settled as far as possible through further negotiations between the two Parties. If a dispute cannot be settled within six months after the date of the beginning of negotiations, it shall be submitted, at the request of one of the Contracting Parties, to an arbitral tribunal.

(2) The arbitral tribunal shall be constituted as follows:

Each Contracting Party shall appoint an arbitrator, the two arbitrators propose, by mutual agreement, both parties, a Chairman who shall be a citizen of a third State, designated by both contracting parties. The arbitrators shall be appointed within three months and the President within five months after one of the Contracting Parties have notified to the other its desire to submit the dispute to an arbitral tribunal.

If the arbitrators are not appointed in the period agreed, the Contracting Party that did not appoint its arbitrator will accept that this would be appointed by the Secretary General of the United Nations. If the two Parties cannot agree on the appointment of the President they will accept also that this would be appointed by the Secretary General of the United Nations

(3) The Tribunal arbitral will take its decisions following the dispositions of the present agreement or other similar agreements agreed by the Contracting Parties, the principles of international law. The arbitral tribunal makes its decisions by majority and its decision is definitive and mandatory. Only the Contracting Parties might submit claims to the arbitral tribunal and participate in the hearings.

(4) Each Contracting Party bears the costs of the arbitrator appointed by it and those made by its counsels in the hearings. The cost related to the President and other costs will be assume by the Contracting Parties in equal amounts.

## **Article 10. Final Provisions**

(1) This Agreement shall be ratified following the constitutional procedure of each country.

(2) It will come into force on the exchange of instruments of ratification.

(3) It shall be valid for a period of ten years and shall be tacitly renewed for further periods of five years unless either of the parties notify, in writing, to the other contracting Partie of its intention to terminate the agreement.

(4) The agreement may be terminated after the expiry of the initial period of 10 years. Such denunciation shall take effect one year after the notification through diplomatic channels to the other contracting party.

(5) The contracting parties may agree to modify or amend this Agreement. Such modifications or amendments shall enter into force in accordance with the procedure referred to in paragraph 1 of the present article.

(6) In respect of investments made during the term of validity of this agreement, these provisions shall continue to apply for a period of ten years from the date the termination of this Agreement.

Done at Libreville on 11 April 1979, in two originals in Romanian and French, both texts being equally authentic.

For the Government of the Gabonese Republic

For the Government of the Socialist Republic of Romania