

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS OF CAPITAL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Socialist Republic of Romania, hereinafter referred to as the Contracting Parties;

Desiring to create favourable conditions for investment of capital by investors of one State in the territory of the other State;

Recalling the provisions for development of economic collaboration in the Long Term Agreement on Economic Collaboration and Industrial and Technological Co-operation concluded between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Romania on 18 September 1975;

Conscious that the reciprocal protection of invested capital under interzonal agreement stimulates investment;

Taking into account the provisions of the Final Act of the Conference on Security and Co-operation in Europe including those provisions favouring the conclusion of specific bilateral agreements concerning various problems of mutual interest;

Recognising the advantages of long term agreements as a basis for developing economic relations;

Have agreed as follows:

Article 1. Promotion and Protection of Investments of Capital

1. Each Contracting Party shall encourage and create favourable conditions for investments of capital in its territory by investors of the other Contracting Party.

2. Investments of capital shall be admitted in accordance with the legal provisions of the Contracting Party in the territory of which the investment is made and shall enjoy protection as provided in this Agreement.

Article 2. Definitions

For the purpose of this Agreement:

1. "Investment of capital" means any right of participation in any enterprise or economic undertaking including any share of the capital to which an investor is entitled as well as any capital appreciation and in particular, but not exclusively:

(a) rights of property whether movable or immovable as defined in accordance with the law of the Contracting Party in whose territory the property in question is situated;

(b) shares or any other interest in the property of an enterprise or economic undertaking;

(c) claims to money or other rights relating to services having financial value;

(d) industrial and intellectual property rights, technology, trade-marks, goodwill and know-how;

(e) concessions conferred by law or contract including concessions for research.

2. "Profits" means the amounts yielded by capital.

3. "Investors" means:

(a) in respect of the Socialist Republic of Romania: Romanian economic units having legal personality and which, under the

law of Romania, are entitled to trade abroad or undertake international economic co-operation activities;

(b) in respect of the United Kingdom: corporations, firms or associations incorporated or constituted under the law in force in part of the United Kingdom and United Kingdom nationals

4. "Territory" means in respect of the United Kingdom: Great Britain and Northern Ireland.

Article 3. Most Favoured Nation Provisions

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

2. If the legislation of either of the Contracting Parties, or existing or future international agreements concluded by either of them, accord to any other investors or their investments of capital and profits more favourable treatment than that provided for in the present Agreement, such more favourable treatment shall apply to investors of the other Contracting Party, their investment of capital and profits.

3. The provisions of this Agreement relating to most favoured nation treatment shall not apply to the advantages that either of the Contracting Parties accords to the investors of a third country under an existing or future customs union, a free trade area or taking into account membership of an economic community.

4. The provisions of this Agreement relating to most favoured nation treatment shall not require either Contracting Party to extend to the investor of the other the benefit of any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Each Contracting Party shall observe all other obligations entered with regard to investors of the other Contracting Party, their investments, capital and profits.

Article 4. Expropriation and Compensation

1. The investments of capital of investors 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 in the public interest, under due process of law and against compensation. Compensation shall amount to the value of the capital on the date of expropriation, shall be effectively realizable, be freely transferable and made without delay. Not later than the date of expropriation, a procedure shall be established to determine the amount and method of payment of compensation. Upon the request of the investor affected, the amount of compensation shall be subject to review under due process of law, in accordance with the principles set out in this paragraph, by a competent tribunal acting judicially in the country in which the investment has been made. The compensation once finally established shall incur interest for the period of any undue delay in making payment.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party concerning the amount of compensation continues to exist after the exhaustion of remedies available in the territory of the Contracting Party in which the investment was made, either party to the dispute shall be entitled to submit the case for conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965.

3. Investors of one Contracting Party whose investment of capital in the territory of the other Contracting Party suffers losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot, including losses occasioned by requisitioning in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards compensation or other settlement, not less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 5. Repatriation of Capital and Profits

Each Contracting Party shall in respect of the capital and profits of investors of the other Contracting Party guarantee their free transfer (and, in the case of sale or liquidation, of the proceeds of such sale or liquidation), subject to the right of each Contracting Party to exercise equitably, in good faith and on a non-discriminatory basis powers conferred by its laws.

Article 6. Subrogation

If either Contracting Party makes payment to an investor under an indemnity it has given in respect of his investment of capital or any part thereof invested in the territory of the other Contracting Party, the latter Contracting Party shall recognise:

(a) the assignment, whether under law or pursuant to a legal transaction of any right or claim from that investor to the former Contracting Party, and

(b) that the former Contracting Party is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment of capital including payment of taxes and fees.

The former Contracting Party shall accordingly if it so desires be entitled to assert any such right or claim to the same extent and subject to the same restrictions as its predecessors in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances.

Article 7. Transfers of Currency

Transfers of currency pursuant to Articles 4, 5 and 6 shall be effected without delay in the convertible currency in which the capital was invested or in any other convertible currency if so agreed by the investor at the official rate of exchange in force at the date of transfer.

Article 8. Existing Investments of Capital

Investments of capital made by investors of one Contracting Party in the territory of the other Contracting Party before this Agreement enters into force and the profits therefrom shall also be subject to the provisions of this Agreement.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels. If a dispute between the Contracting Parties cannot thus be settled within six months of the dispute arising, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

2. 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. If within any of the periods specified the necessary appointments have not been made, 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 national of either Contracting Party or 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 national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

3. The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the rules of general international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties who alone shall have the right of audience before the tribunal.

4. Each Contracting Party shall bear the cost of its own member of tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

5. The tribunal shall determine its own procedure.

Article 10. Entry Into Force, Duration and Termination

1. This Agreement shall be ratified according to the constitutional procedures of each Contracting Party and instruments of ratification shall be exchanged at Bucharest as soon as possible.

2. The Agreement shall come into force one month after the exchange of instruments of ratification. It shall remain in force for a period of ten years and thereafter shall be extended for further periods of ten years unless written notice of denunciation has been given by one of the Contracting Parties not less than twelve months before the end of the initial or any further ten year period.

3. In respect of investments of capital whilst the Agreement is in force and the profits therefrom, its provisions shall continue in effect for a period of twenty years from the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 19th day of March 1976, in the English and Romanian languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

ROY HATTERSLEY

For the Government of the Republic of Romania:

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