

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF ROMANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the State of Israel and the Government of Romania (hereinafter: the "Contracting Parties");

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favorable conditions for increasing investments by investors of either Contracting Party in the territory of the other Contracting Party,

And,

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of business initiative and will increase prosperity in both states.

Have agreed as follows:

## **Article 1. Definitions and Scope**

1. For the purposes of the present Agreement:

a) The term "investments" shall comprise any kind of assets including, but not limited to: i) Movable and immovable property, as well as any other rights in rem;

ii) Rights derived from shares, bonds and other kinds of legal interests in companies;

iii) Claims to money and other assets and to any activity having an economic value;

iv) Rights derived from goodwill, rights in the field of intellectual and industrial property, technical processes and know-how.

v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

b) A change in the form in which assets are invested does not affect their character as investments within the meaning of this Agreement.

c) The term "investor" shall comprise:

In respect of the State of Israel:

i) Physical persons deriving their status as citizens or permanent residents of the State of Israel from the law in force in the State of Israel or

ii) Companies including corporations, firms or associations incorporated or constituted in accordance with the law of the State of Israel.

In respect of Romania:

Any physical person holding Romanian citizenship, in accordance with the law in force, as well as any legal person constituted under Romanian law and having its head office in Romania.

The Contracting Parties have expressed their further understanding regarding the term "investor" in an annex hereto

d) The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profit, interest, capital gains, royalties or fees.

2.

a) The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made after December 31, 1989.

b) The provisions of this Agreement shall not apply to disputes which arose prior to January 1, 1990.

## **Article 2. Promotion and Protection of Investment**

1. Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such investments.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. Each Contracting Party undertakes to provide effective means of asserting claims and enforcing rights with respect to this Agreement, investment authorizations and properties. Neither Contracting Party shall impair the right of investors of the other Contracting Party to have access to its courts of law, administrative tribunals and agencies and all other bodies exercising judicial powers.

4. Each Contracting Party shall make public all laws and regulations that pertain to or affect investments of investors of the other Contracting Party in its territory.

## **Article 3. Most Favored Nation Treatment**

1. Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third state.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third state.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation; or

(b) Any existing customs or economic union, any free trade area agreement or any similar international agreement to which either of the Contracting Parties is or may become a party.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity 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 favorable than that which the latter Contracting Party accords to its own investors or to investors of any third state. Resulting payments shall be freely transferable.

2. Without prejudice to paragraph (1) of this article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party; resulting from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

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

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation thereafter: "expropriation") in the territory of the other Contracting Party, except:

- a) For a public purpose related to the internal needs of that Contracting Party;
- b) On a non-discriminatory basis; and
- c) Against prompt, adequate and effective compensation.

2. The compensation shall:

- a) Amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier;
- b) Include interest as provided by law until the date of payment; and
- c) Be made without delay, be effectively realizable and be freely transferable.

3. In the event that market value cannot be easily ascertained, the compensation shall be determined based on equitable principles taking into account, inter alia, the capital invested, its appreciation or depreciation; current returns, replacement value and other relevant factors.

4. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

5. Where a Contracting Party expropriates the assets of a company or legal person, within the meaning of Article 1 (c), which is incorporated or constituted under the law in force in its territory and in which investors of the other Contracting Party own shares, or other ownership rights, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation, in respect of their investment to such investors of the other Contracting Party who are owners of those shares or other ownership rights.

## **Article 6. Transfers of Currency**

Each Contracting Party shall, in respect of investments, guarantee to investors of the other Contracting Party, subject to the exceptions stated in an annex which is an integral part of this Agreement, the unrestricted transfer of their investments, returns and proceeds from the total or partial sale or liquidation of an investment. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

## **Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor**

1. Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled, as far as possible, amicably by consultations and negotiations between the parties to the dispute.

2. If any such dispute should arise and cannot be resolved, amicably or otherwise, within six months from written notification of the existence of the dispute, then the investor affected may institute conciliation or arbitration proceedings by addressing a request to that effect to the Secretary-General of the Centre, as provided in Article 28 or 36 respectively of the Convention. 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 the fact that the investor which is the other party to the dispute has received, in pursuance of an insurance contract, an indemnity in respect of some or all of his or its losses.

3. In event the investor chooses the Centre, each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter and hereinabove: the "Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former.

4. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which, before such a dispute arises, the majority of shares are owned by nationals or companies of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party.

5. Neither Contracting Party shall pursue, through the diplomatic channel, any dispute referred to the Centre, unless:

Conciliation commission or an arbitral tribunal constituted by it decides that the dispute is not within the jurisdiction of the Centre; or (b) the other Contracting Party should not comply with any award rendered by an arbitral tribunal.

6. All arbitral awards of the Centre shall be final and binding on the parties to the dispute.

7. All sums received as a result of a settlement shall be freely transferable.

## **Article 8. 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 the diplomatic channel, which may include, if both Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

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, with the approval of both Contracting Parties, select a national of a third State, who, on approval by the two 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, within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Chamber of Commerce in Paris (hereinafter: the "ICC") to make any necessary appointments. If the President is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function, the Member of the ICC next in seniority shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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 the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision, direct that a higher proportion of costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

## **Article 9. Subrogation**

If one Contracting Party or its designated Agency (hereinafter: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (hereinafter: the "Second Contracting Party"), the Second Contracting Party shall recognize:

(a) The assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified and that the First Contracting Party is entitled to the same treatment in respect of the rights and claims as the party indemnified; and

(b) That the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and to any payments received in pursuance of such rights and claims, to the same extent as the party indemnified.

Any payments received in non-convertible currency by the First Contracting Party, in pursuance of the rights and claims acquired, shall be freely available to the First Contracting Party for the purpose of meeting any expenditure incurred in the territory of the Second Contracting Party.

## **Article 10. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established

hereafter between the Contracting Parties in addition to the present Agreement contain rules whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the present Agreement.

## **Article 11. Entry Into Force**

Each Contracting Party shall notify the other Contracting Party of the completion of the procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

## **Article 12. Duration and Termination**

This Agreement shall remain in force for a period of 10 years. Thereafter, it shall continue in force until the expiration of 12 months from the date on which either Contracting Party shall have given written notice of termination to the other. In respect of investments made while the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at ..... this ..... day of ..... 199\_\_, which corresponds to the ..... day of ..... 575\_, in the Hebrew, Romanian and English languages, all three texts being equally authentic.

In case of diversions of interpretations, the English text shall prevail.

For the Government of the State of Israel

For the Government of Romania