

# **Agreement between the Government of the Italian Republic and the Government of the Socialist Republic of Romania on the mutual promotion and guarantee of capital investment**

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

Desiring to create favorable conditions for capital investments made by investors from the Italian Republic in the territory of the Socialist Republic of Romania and by investors from the Socialist Republic of Romania in the territory of the Italian Republic;

Taking into account the cooperation already happily established with the Long-Term Agreement on Economic, Industrial and Technical Cooperation between the two Governments signed in Rome on May 22, 1973;

Mindful that the mutual guarantee of capital investment under international agreements is likely to stimulate such investment;

Taking due account of the provisions of the Final Act of the Conference on Security and Cooperation in Europe, and in particular the provisions relating to the chapter on the development of cooperation in the field of economics and those intended to encourage the conclusion of specific bilateral agreements concerning various problems of mutual interest;

Have agreed as follows:

## **Article 1. Promotion and Guarantee of Capital Investment**

1. Each of the Contracting Parties shall encourage and create favorable conditions for capital investment in its territory by investors of the other Contracting Party.
2. Capital investments will be permitted in accordance with the legal provisions of the Contracting Party in whose territory the investments will be made and will enjoy the guarantee provided for in this Agreement.
3. Investments under this Agreement shall enjoy in the territory of each Contracting Party all protection and security.

## **Article 2. Definitions**

For the purposes of this Agreement:

1. "Capital investment" means the contribution to the realization of an economic objective, including any category of goods and services' in which capital is invested. Specifically, though not exclusively, " capital investment " means:

- (a) the ownership of movable and immovable property and any other rights in rem acquired or established in accordance with the law of the country in which the investment is made;
- (b) rights of participation in companies, enterprises or other economic ventures, including any share of capital to which the investor is entitled to any other form of equity participation;
- (c) pecuniary claims and other rights relating to services and benefits that have economic and financial value;
- (d) industrial and intellectual property rights, technological processes, trademarks, trade names and goodwill, and know-how;
- (e) concessions conferred by law and by contract, including those of research and disuse.

The change of form under which the capital has been invested will not affect its investment quality.

2. "Profits" means dividends, benefits and income of any kind produced by invested capital.

3. "Investors" means:

(a) as far as the Italian Republic is concerned: residents of Italian nationality and legal persons incorporated in the territory of the Republic within the limits of and in compliance with the regulations in force;

(b) as far as the Socialist Republic of Romania is concerned: the Romanian economic units having legal personality, which, in accordance with the Romanian legal norms, are qualified to carry out commercial activities and economic cooperation with foreign countries.

### **Article 3. Most-favored-nation Treatment**

1. Each Contracting Party shall grant, within its own territory, investors from the other Contracting Party, their capital investments and the profits derived therefrom, treatment no less favorable than that accorded to investors from third states, their capital investments and the profits derived therefrom, either on the basis of its own domestic legislation or in execution of present and future international agreements.

2. The provisions of paragraph 1 shall not apply in the event that the advantages accorded to investors from third States, their capital investments and the profits therefrom, arise from the present and future membership of the Contracting Parties in customs, or currency unions, free trade zones and economic communities.

3. The provisions of paragraph 1 on the granting of most-favored-nation treatment shall not entail any obligation on either Contracting Party to extend to the investors of the other Party, to their capital investments and earnings therefrom, the benefits arising from the execution of international agreements or arrangements concerning all or part of taxes and fees or arising from the application of its domestic taxation legislation.

4. Each Contracting Party shall respect any other obligations assumed with respect to the investors of the other Contracting Party, their capital investments and earnings thereon.

### **Article 4. Expropriation and Compensation**

1. The capital investments of the investors of each Contracting Party in the territory of the other Contracting Party shall not be subjected to nationalization, expropriation or measures equivalent to nationalization or expropriation except for a cause of public interest legally declared with due procedures and against the payment of compensation.

Such compensation shall correspond to the real value of the expropriated capital at the date of the expropriation itself, be liquid and payable upon transfer of ownership, be paid without delay to the entitled parties, and be freely transferable without delay into convertible currency.

At the request of the expropriated investor, the amount of the compensation shall be reassessed by the competent court in the country where the investment was made, in accordance with due process of law and in accordance with the principles set forth in this article.

If, notwithstanding the exhaustion of the procedures and remedies provided by the law of the country where the capital investment took place, differences continue to exist between the claims of an investor of one Contracting Party and those of the other Contracting Party as to the amount of the compensation the parties to the dispute shall have the right to submit within a period of 2 months from the exhaustion of domestic remedies the dispute to conciliation or arbitration, in conformity with the provisions of the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on March 18, 1965.

In the event that the amount of the indemnity finally fixed is higher or lower than the amount of the compensation liquidated at the time of expropriation, the difference thereof shall be paid or returned without delay to the person entitled thereto, be transferable freely and without delay in convertible currency.

In the event that payments of the compensations referred to in this paragraph are made with delay to the entitled person, interest shall be due to the latter for the period corresponding to the delay.

2. Investors of a Contracting Party whose investments have suffered loss or damage as a result of war or other armed conflict, revolution, state of national emergency, revolt, insurrection or riot, including loss or damage as a result of requisitions suffered in the territory of the other Contracting Party, shall be accorded by the latter - with respect to restitution, indemnities, compensation or other reparations - appropriate treatment and, in any case, no less favorable than that accorded to investors of third States. The relevant payments shall be paid without delay to the entitled parties and be

freely transferable without delay in convertible currency.

## **Article 5. Repatriation of Capital and Profits**

Each Contracting Party shall at all times ensure the free transfer of capital and profits therefrom, as well as capital from subsequent realizations and profits therefrom, belonging to investors of the other Contracting Party, and, in the case of liquidation or sale, of the realizations of such liquidation or sale, without prejudice to the right of each Contracting Party to exercise equitably, in good faith and in a non-discriminatory manner, the powers conferred upon it by its law.

## **Article 6. Subrogation**

In the event that one of the Contracting Parties makes, in accordance with its legal provisions, a payment by way of indemnification to one of its investors for a capital investment or part thereof invested in the territory of the other Contracting Party, the other Contracting Party undertakes to recognize:

- (a) the transfer of any rights and claims from said investor to the Contracting Party that paid the indemnity;
- (b) that the Contracting Party that paid the indemnity is empowered by way of subrogation to uphold the rights and claims and to exercise the actions due to the investor, thereby assuming its obligations related to the capital investment, including that of the payment of the relevant taxes and duties.

The subrogated Contracting Party may support the rights and claims and exercise the actions to the same extent and within the same limits as the former owner both before judicial bodies of the other Contracting Party and in any other form provided for.

## **Article 7. Currency Transfers**

1. The currency transfers provided for in Articles 4, 5 and 6 above shall be made freely and without delay in the convertible currency in which the capital investment was made, or in any other convertible currency at the official exchange rate in effect on the date of the transfer.
2. Transfers are understood to be without delay if they are made within a period normally necessary to complete the transfer formalities. The time limit shall run from the day on which the request for transfer accompanied by the necessary documents has been submitted to the competent authorities in the manner prescribed by law. This time limit shall in no case exceed a period of two months.

## **Article 8. Prior Capital Investments**

Capital investments made prior to the entry into force of this Agreement by investors of one Contracting Party in the territory of the other Contracting Party and the profits derived therefrom shall be equally governed by 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 shall be settled through diplomatic channels. If a dispute between the Contracting Parties cannot be resolved through diplomatic channels within six months of its commencement, upon the request of one of the Contracting Parties the same shall be submitted to the judgment of an arbitral tribunal.
2. The arbitral tribunal will be constituted for each specific case as follows. Within two months after receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator. The two arbitrators so appointed shall select a national of a third state who shall be appointed chairman of the arbitral tribunal upon the approval of the two Contracting Parties. The chairman shall be appointed within two months from the date of appointment of the other two members.

If in none of the periods specified above have the appointments in question taken place, either Party may, in the absence of other arrangements, invite the president of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Contracting Parties or is otherwise prevented from performing that duty, the necessary appointments shall be made by the Vice President of the International Court of Justice. If he is also in one of the impending situations recalled in this paragraph the appointments will be made by the most senior member of the International Court of Justice who is not a national of one of the Contracting Parties.

3. The arbitral tribunal will apply the provisions of this Agreement and other agreements that may have been concluded between the Contracting Parties and the rules of general international law. It will decide by a majority vote. The decision will be final and binding on both Contracting Parties.
4. Each Contracting Party shall bear the expenses related to its tribunal member as well as to its representation in the arbitration proceedings. Expenses related to the chairman of the arbitral tribunal and the remaining expenses shall be borne equally by the Contracting Parties.
5. The arbitral tribunal shall establish its own procedure.

## **Article 10. Entry Into Force, Duration and Termination of the Agreement**

1. This Agreement shall be ratified in accordance with the constitutional procedures of each Contracting Party; instruments of ratification shall be exchanged in Rome as soon as possible.
2. This Agreement will enter into force one month after the exchange of the instruments of ratification. It shall remain in force for the duration of ten years and shall be extended for a further period of ten years unless denounced in writing by either of the Contracting Parties at least twelve months before its expiration.

Thereafter, the Agreement may be terminated at any time upon twelve months' written notice.

3. With respect to capital investments made during the term of the Agreement and the earnings thereon, the provisions of this Agreement shall continue in effect for the duration of twenty years from the date of the expiration of the Agreement.

DONE at Bucharest on January 14, 1977 in two originals, in the Italian and Romanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

Filippo Maria Pandolfi

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA

Florea Dumitrescu