

# **Agreement between the Government of Romania and the Government of the Republic of Paraguay on reciprocal promotion and protection of investments**

The Government of Romania and the Government of the Republic of Paraguay (hereinafter referred to as "contracting parties").

Desiring to intensify economic cooperation in the mutual benefit of both States;

With intent to create and maintain favourable conditions for investments of investors of a contracting party in the territory of the other contracting party;

Recognizing the need to promote and to protect the foreign investments in view of the economic prosperity of both States;

Have agreed as follows;

## **Article 1. Definitions**

For the purposes of this Convention the following definitions shall apply for the terms set out below:

1. "investment" means every kind of assets of a investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter.

The term designates in particular, though not exclusively:

- a) Ownership of movable and immovable property and other property rights such as mortgages, liens and guarantees;
- b) Shares or rights of participation in companies and other kinds of interests in companies or joint ventures;
- c) Monetary rights and the rights to any provision of financial and economic value;
- d) Intellectual Property Rights, such as: copyrights, patents, industrial designs or models, trade marks, trade names, industrial and commercial secrets, technological procedures, know-how (knowledge) as well as other similar rights that are recognized / by the laws of the Contracting Party.
- e) Concessions granted by the laws or under a contract of Contracting Parties for prospecting, exploration and exploitation of natural resources.

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

2. "Investors":

i) In relation with Romania:

- a) Any person who according to the Romanian laws and regulations is considered to be its citizens;
- b) Any legal person constituted in accordance with the rumanian laws and regulations having its seat and economic activity in Romania,

ii) In respect of the Republic of Paraguay:

- a) Any natural person is a national of the Republic of Paraguay, in accordance with the existing legislation;
- b) Any legal person constituted in accordance with the laws and regulations of the Republic of Paraguay, having its seat in the territory of the same.

3. Proceeds: it means the amounts derived from a investment and includes in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, fees and other income;

4. "Territory means:

i) In respect of Romania, its territory, including the territorial sea, as well as the continental shelf and exclusive economic zone over which it exercises, in accordance with international law, sovereign, sovereign rights or jurisdiction.

ii) In respect of the Republic of Paraguay, refers to the territory of the State, over which it may exercise its sovereign rights or jurisdiction in accordance with international law.

## **Article 2. Admission and Promotion**

1. Promotion: Each Contracting Party will promote in its territory, as far as possible investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Acceptance: the Contracting Party have admitted an investments in its territory, will grant thewill fac necessary permits in connection with such investments, including the implementation of licensing agreements and contracts for commercial, administrative or technical assistance. Each Contracting Party will facilitate, when it is required, the necessary permits for activities of consultants or other qualified persons of foreign nationality.

## **Article 3. Protection- Treatment and Economic Integration Area**

1. Protection: Each Contracting Party shall protect within its territory the investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, growth, sale and, if it is the case the liquidation of such investments. In particular, each Contracting Party shall grant the necessary permits referred to in article 2, paragraph 2 of this Agreement.

2. Most favoured nation treatment: Each Contracting Party shall guarantee in its territory a fair and equitable treatment for investments of investors of the other contracting party. This treatment shall not be less favourable than that accorded for each Contracting Party to investments made within its territory by its own investors or granted by each contracting party to investments made in its territory by investors of the most favoured nation, provided that this latter is a more favourable treatment.

3. Integracion Economic Are: The most favoured nation treatment shall not apply to privileges which either Contracting Party agrees to investors of a third country by virtue of its association or participation in a free trade area, customs union or common market.

4. Other: The treatment granted under the present article shall not apply to advantages which either of the Contracting Parties accords to investors of third States as a result of an agreement for the avoidance of double taxation or other tax arrangements.

## **Article 4. Free Transfer**

1 Each Contracting Party in whose territory investors of the other Contracting Party,have made an investment it shall guarantee the free transfer of payments related to these investments, particularly:

a) The profits;

b) Repayments of loans;

c) Amounts assigned to cover expenses relating to the management of the investment;

d) The additional contribution of capital necessary for the maintenance or development of the investments;

e) The proceeds of the sale or, partial or total, liquidation of an investment.

f) The compensation referred to in article 5 and 6.

2 The transfer mentioned above shall be made without undue delay in a freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force of the Contracting Party in whose territory the investment was made.

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

1 None of the Contracting Parties will adopt directly or indirectly, measures of expropriation, nationalization or any other measures of the same nature or effect against investments of investors of the other contracting party except for public interest, in accordance with the provisions of the national constitutions and provided that such measures are non-discriminatory and that give rise to the payment of prompt, adequate and effective compensation in accordance with the legal provisions. The concept of public interest, shall be interpreted in accordance with the terms set out in the Interpretative Protocol, annex to this Convention.

2 Compensation must correspond to the real market value of the expropriated or nationalized investment immediately before the date of expropriation, the nationalization or the equivalent measure be published. The compensation shall be paid without delay, in a freely convertible currency. The compensation shall include interests from the expropriation date until its payment, it shall be feasible and freely transferable in a convertible currency.

## **Article 6. Compensation for Losses**

1 Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party as a result of war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the other Contracting Party, shall be treated no less favourably than its own investors or investors of any third State as regards to restitution, indemnification, payments or other adjustments. Transferable payments shall be in accordance with article 4.

## **Article 7. Subrogation**

1 If a Contracting Party or its authorized agency has granted a guarantee to cover non-commercial risks with regard to an investment made by one of its investors in the territory of the other contracting party, the latter Contracting Party shall recognize the subrogation of the first Contracting Party or its authorized agency of the investor in the same rights conferred by law of the host Party of the Investment, provided that the first Contracting Party has made a payment under such security.

## **Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1 For investment disputes regarding the investments between a contracting party and an investor of the other Contracting Party, the interested parties shall make consultations to solve the case, as far as possible, amicably.

2 If the consultations fail to resolve the dispute within a period of six months from the date of request of settlement of the dispute, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter case the investor has the following options:

a) The International Centre for International Settlement Centre for Settlement of Investment Disputes (I.C.S.I.D.), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on March 18th, 1965; or

b) A Tribunal ad hoc, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

3. In the event of recourse to national jurisdiction, the investor cannot appeal to international arbitration mentioned in paragraph 21 of this article except in the event that after a period of 18 months from the summons of the request there is not a final judgement and executed, and the two sides agree to desist from that judicial body, to submit the dispute to international arbitration.

4. The Contracting Party which is a party to a dispute at any time during the proceedings may, in its defence use their immunity or the fact that the investor has received compensation under an insurance contract, compensation all or part of the incurred damage or loss.

5. The arbitral tribunal may decide on basis to this Agreement and other relevant agreements between the contracting parties; based on the terms of any agreement which may be concluded in connection with the investment, the Law of the Contracting Party which is party to the dispute, including its rules on the conflict of laws; those principles and rules of international law as may be applicable.

6. Decisions of the Tribunal are final and binding for the parties in dispute.

## **Article 9. Settlement of Disputes between Contracting Parties**

1. Disputes between contracting parties regarding the interpretation or application of the provisions of this Agreement shall be settled by diplomatic means.

2. If the contracting parties cannot reach an agreement within six months after the beginning of the dispute shall be submitted, at the request of either party to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators so nominated shall appoint the Chairman of the Tribunal, which will be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and do not answer to the invitation of the other contracting party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If in the cases provided for in the paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out the said function or if the appointment of either Contracting Party shall be made by the Vice-President and if the latter is prevented or if it is a national of either Contracting Party, the appointment shall be made by the judge of the Court of greater seniority who is not a national of either of the Contracting Parties.

6. The arbitral tribunal shall reach its decision by a majority of votes. Each Contracting Party shall bear the costs of its arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the contracting parties.

7. The Tribunal itself determinará-su procedure.

8. The decisions of the Tribunal are final and binding on the contracting parties.

## **Article 10. Supplementary Provisions**

1. Each Contracting Party shall respect the obligations assumed with regard to investments of investors of the other contracting party.

2. If the provisions of the law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement contain general or special rules, entitling investments of investors of the other contracting party to a more favourable treatment than that provided for in this Agreement, - such rules shall prevail over this Agreement.

3. Every expression is not defined in this agreement shall have the meaning is used in the legislation in force in each Contracting State.

## **Article 11. Scope of Application**

This Agreement shall apply to investments in the Territory of one of the Contracting Parties, made in accordance with its legislation, including the procedures for the temporary admission of investors of the other Contracting Party before or after the entry into force of this Agreement. However, this Agreement shall not be applied to any differences or disputes which have arisen prior to its entry into force.

## **Article 12. Validity, Duration and Termination of the Agreement**

1. This Agreement shall enter into force on the thirtieth day following the date on which the contracting parties have notified each other in writing, they have complied with the constitutional procedures for approval in their respective countries and will stay in force for a period of 10 years.

2. Unless either of the Contracting Parties has denounced in writing at least twelve months prior to the expiry date of its validity, the present Agreement shall be tacitly extended for periods of 10 years, each Contracting Party reserves the right to denounce this agreement, upon notification at least twelve months before the date of expiry of the current period of

validity.

3. In relation to those investments made prior to the date of termination of this Agreement, articles 1 to 11 above, shall remain in force for a period of ten years from that date.

IN WITNESS OF WHICH the undersigned duly authorized by their respective Governments, have signed this Agreement.

Done at Asunción, and on the 20th day of May nineteen ninety-four in Romanian and Spanish languages, both texts being equally authentic.

## **Interpretative protocol**

In the event of the conclusion of the Agreement between the Republic of Romania and Paraguay about the reciprocal promotion and protection of investments, the undersigned Plenipotentiaries have also taken the following provisions, which is considered as an integral part of this Agreement:

In order to comply with the provisions of article 109 of the Paraguayan Constitution, a clarification is needed, as set out in article 5 of this Convention, within the meaning of the concepts "public interest" and "social interest", are included in the term "public interest".

Done at Asunción, this May nineteen ninety-four twenty and one each in two originals in Romanian and Spanish languages, both texts being equally authentic.

The Government of Romania

The Government of the Republic Paraguay