AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF ROMANIA ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Romania and the Government of the Republic of Cyprus, hereinafter referred to as "the Contracting Parties",

Desiring to develop further the relations of economic co-operation existing between their two States and to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Conscious about the necessity to create and maintain a stable framework, in order to stimulate the investments and maximum effective utilization of economic resources of either country,

Recognising that the encouragement and reciprocal protection of investments, according to the present Agreement will be conducive to the stimulation of initiatives in this field and will increase prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term “investment” shall comprise every kind of asset connected with the participation in companies and joint ventures, more particularly, though not exclusively:

a. Moveable and immovable property as well as any other real rights in respect of every kind of asset;

b. Rights derived from shares, bonds and other kinds of interests in companies;

c. Claims to money, goodwill and other assets and to any performance having an economic or financial value;

d. Rights in the field of intellectual and industrial property, technical processes and know-how;

e. Reinvested returns.

These investments shall be made in compliance with the laws and regulations and any written permit that may be required thereafter of the Contracting Party in the territory of which the investments has been made.

A possible change in the form in which the investments have been made does not affect their substance as investments, provided that such a change does not contradict the laws and regulations and written permits of the Contracting Parties.

2. The term “investors” means:

a. In respect of Romania: any natural person holding Romanian citizenship, in accordance with the laws in force as well as any legal person constituted under the Romanian laws and having the head office in Romania.

b. In respect of the Republic of Cyprus: any natural person having the citizenship of the Republic of Cyprus in accordance with its Law as well as any legal entity incorporated in compliance with its laws and having its seat in the area of the Republic of Cyprus which is under the jurisdiction and the control of the Republic’s Government.

3. The term “returns” means those net amounts received from the investment for a certain period of time, such as shares of profits, dividends, interest, royalties and other fees, proceeds from total or partial liquidation of the investment, as well as any other sums emanating from such investment which are considered as income under the laws of the host country.

4. The term “national” means:

a. In respect of Romania: any natural person having Romanian citizenship in accordance with Romanian laws and regulations.

b. In respect of the Republic of Cyprus: any natural person who, according to the laws of the Republic of Cyprus is a citizen of the Republic of Cyprus.

Article 2. Promotion and Protection of Investments

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

2. Investments shall be admitted in accordance with the legal provisions and the Government regulations and official policies followed of the Contracting Party in the territory in which the investment is made and shall enjoy the protection and guarantees provided for in this Agreement.

3. Each Contracting Party undertakes to provide in its territory a fair and equitable treatment for investment of investors of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary, unreasonable or discriminatory measures the management, maintenance or use of investments as well as the right of disposal of these.

4. Investors of either Contracting Party shall be permitted to engage top managerial and technical personnel, of their choice, regardless of nationality, to the extent permitted by the laws and regulations and official policies followed in the host state. Subject to the laws, regulations and official policies followed relating to the entry and sojourn of aliens, nationals of either Contracting Party shall be permitted to enter and to remain in the territory of the other Contracting Party for the purpose of establishing and administering their investment.

5. Each Contracting Party undertakes to provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Contracting Party shall not impair the right of the investors of the other Contracting Party to have access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority.

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

Article 3. Most-favoured Nation Treatment

1. Each Contracting Party shall accord to the investments made in its territory by investors of the other Contracting Party a treatment not less favourable than that which it accords in like situations to investments o investors of any third State.

2. Each Contracting Party shall accord to the investors of the other Contracting Party, with regard to managements, maintenance, use or disposal of their investments, a treatment not less favourable than that it accords to investors of any third State.

3. The provisions of this Agreement relating in the granting of the most favoured nation treatment, shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the advantage resulting from:

a. Any economic or custom union, a free trade area r regional economic organization, to which either of the Contracting Party is or may become a party:

b. Any international or regional agreement or other arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

c. Any investment agreement which provides for retroactive validity or defines indirect shareholdings as investments.

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

Article 4. Expropriation and Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

a. The measures are taken in the public interest and under due process of law;

b. The measures are not discriminatory;

c. The measures are accompanied by provisions for the payment of just compensation.

2. The compensation shall correspond to the value of the investment subjected to one of the measures mentioned in paragraph 1 of this Article and should be prompt, adequate and effective.

3. The amount of compensation shall be determined in accordance with recognized principles of valuation, such as the free market value of the investment on the date of expropriation

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

4. Upon the request of the concerned investor, the amount of compensation can be redressed by a tribunal or other competent body within the jurisdiction of the Contracting Party in the territory of which the investment has been made.

5. The amount of compensation finally determined shall be promptly paid to the investor, who has the right to transfer without delay these amounts in freely convertible currencies. In the event that payment of compensation is delayed the investor shall receive interest for the period of any undue delay in making payment.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffered losses owing to a war or other armed conflict, a state or national emergency, revolution, revolt, insurrection or other similar events, including losses occasioned by requisitioning shall be accorded by the latter Contracting Party, with regard to the measures taken to cover the losses, a treatment not less favourable than that it accords to the investors of any third State. The amounts resulting from this Article, if any, shall be freely transferable.

Article 6. Transfers of Currency

1. Each Contracting Party guarantees to the investor of the other Contracting Party, in respect of their investment, subject to its laws and regulations, the transfer of:

a. Return on investments, including profits, interests, dividends and royalties;

b. Amounts necessary for the repayment of regularly contracted loans;

c. Proceeds of the recovery of claims, of the total or partial liquidation of the investments, including capital gains or increases in the invested capital;

d. Compensation paid pursuant to Articles 4 and 5;

e. Royalties and other payments resulting from license rights and from commercial, administrative or technical assistance;

f. The nationals of each Contracting Party who have been authorised to work in the territory of the other Contracting Party in connection with an approved investment shall be permitted to transfer the part of their earnings which is not spent locally to their country of origin.

2. Each Contracting Party shall issue, after fulfilment of the legal obligation pertaining to the investors, the necessary licenses in order to ensure the execution without delay of the transfers.

3. The above transfers shall be made in the convertible currency in which the investment has been made or in any other freely convertible currency, at the official rate of exchange in force at the date of the transfer.

4. “Without delay”, in the meaning of this Article, are considered the transfers which are made within a period normally required to prepare the formalities of transfer. The time is estimated from the date when the application together with the necessary documents were submitted, in the proper way, to the competent authorities and should not exceed, in any case a period of two months.

Article 7. Subrogation

If either Contracting Party makes payment to one of its investors under a guarantee it has given in respect of an investment or any part thereof invested in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) The assignment, whether under law or pursuant to a legal transaction of any right, claim and obligation 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 assure the obligations related to the investment including payment of taxes and fees.

The former Contracting Party shall accordingly, if it so desires, be entitled to assert any such right or claims to the same extent and subject to the same restrictions as its predecessor in title.

Article 8. Settlement of Investment Disputes

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 between the interested parties.

2. In the event that such a dispute cannot be settled amicably within three months of the date of a written application, the investor in question may submit the dispute, at his choice, for settlement to:

a. The Contracting Party's court, at all instances, having territorial jurisdiction;

b. The "International Centre for the Settlement of Investment Disputes" for the application of the conciliation and arbitration procedures provided by the Washington Convention of 18 March 1965 on the "Settlement of Investment Disputes as between States and Nationals of other States".

3. The Contracting Party which is a party to the dispute shall at no time whatever during the procedures involving any investment dispute assert as a defines its immunity as well as the fact that the investor has received compensation under an insurance contact covering the whole or-part of the incurred damage or loss.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of the Agreement shall be settled, as far as possible, through negotiation between the two Contracting Parties. If such a dispute cannot thus be settled within six months after the commencement of the negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

2. The arbitral tribunal shall be constituted for each individual case in the following way: each Contracting Party shall appoint one arbitrator; the two arbitrators shall then select a national of a third State who on the approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The arbitrators shall be appointed within three months and the Chairman within five months of the receipt of request for arbitration.

3. If within any of the periods specified in paragraph 2 the necessary appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice 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.

4. The arbitral tribunal shall reach its decision on the basis of the provisions of the Agreement and of other agreements concluded between the Contracting Parties as well as on the general principles and rules of international law. The decision shall be reached by a majority of votes. Such decisions shall be final and binding.

5. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation to the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

6. The arbitral tribunal shall determine its own procedure.

Article 10. Application

This Agreement shall also apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party after its entering into force

Article 11. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other that the legal or constitutional requirements, as the case may be, for the entry into force of this Agreement have been fulfilled.

2. The Agreement shall remain in force for a period of ten years and thereafter shall be extended tacitly for further periods of ten years except in the case of denunciations in writing by one of the Contracting Parties six months before the expiry date. After the expiry of the initial period, the Agreement may be denounced at any time with not less than six months written notice.

3. In respect of investments made whilst the Agreement is in force, its provisions shall continue to be effective for a further period of ten years form the date of termination.

Done and signed in Bucharest on the 26th of July, 1991 in two original copies, in the English language, both texts being equally authentic.

For the Government of the Republic of Cyprus

For the Government of Romania

ANNEX. AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS ON ARTICLE 6 OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF ROMANIA CONCERNING THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

With reference to the provisions of Article 5 of the Agreement between the Governments of the Republic of Cyprus and Romania on the mutual promotion and protection of investments, the authorised representatives of both Contracting Parties have agreed upon the following provisions, which constitute an integral part of this Agreement:

“All prospective investors of any of the Contracting States should apply to the competent authorities of the other Contracting State in order to obtain a special permit in accordance with the laws and regulations applicable in the country in which the investment is to be made, before the investment is undertaken.

The permit, if granted, should specify, inter alia the legal provisions and the regulations in force, relating to the terms of the transferability in foreign exchange of any form of return on investments including profits, interest, return on capital, dividends and royalties. Particularly, the permit shall specify that in as far as annual profits in local currency are concerned, the investors from each of the two countries will be entitled to repatriate in freely convertible currency the maximum allowed percentage accorded by the host Government to any other investor in any specific field of economic activity.”

For the Government of the Republic of Cyprus

For the Government of Romania