

Convention between the Government of the French Republic and the Government of the Socialist Republic of Romania on the encouragement and reciprocal protection of investments

The Government of the French Republic and

The Government of the Socialist Republic of Romania,

Desiring to develop economic cooperation relations between the two States and to create favorable conditions for French investments in Romania and Romanian investments in France,

Considering that the granting of guarantees for investments is likely to promote the development of initiatives in this field,

Taking into consideration the Final Act of the Conference for Security and Cooperation in Europe,

Have agreed as follows:

Article 1.

Each Contracting Party shall encourage investments made in its territory by investors of the other Party.

Article 2.

For the purposes of this Agreement:

1. The term "investment" means any participation in or contribution to any enterprise or economic activity of any kind, including all property and financial resources of the participants in the investment, and in particular but not exclusively:

- a) Shares and other forms of direct or indirect participation, including minority participation, in companies incorporated in the territory of one of the Contracting Parties;
- b) movable and immovable property as well as all other real rights or personal securities such as mortgages, liens, usufructs, guarantees and similar rights
- c) reinvested profits, claims or any rights to benefits having economic or financial value;
- d) Industrial property rights, technical processes, copyrights, registered names and other commercial and intangible rights;
- e) industrial concessions granted by law or under contract, including concessions relating to the exploration, extraction or exploitation of natural resources, including maritime areas under the jurisdiction of one of the Contracting Parties.

It is understood that the said participations or contributions of any kind must be invested in accordance with the legislation of the Contracting Party in whose territory the investment is made.

Any change in the form of the investments shall not affect their qualification as investments, provided that such change is not contrary to the legislation of the State in whose territory the investment is made or to the approval granted for the original investment.

2. The term "investors" means:

- a) for the Socialist Republic of Romania, the Romanian economic units with legal personality, such as industrial plants or units assimilated to them and the economic units which, in accordance with the law, have foreign trade and economic cooperation responsibilities with foreign countries
- b) For the French Republic, natural persons who, under French law, have French nationality and legal persons constituted in

France in accordance with French law and having their registered office there.

3. For the purposes of this Agreement :

a) the term "direct holdings" means holdings taken by an investor of a Contracting Party in a company or economic activity located in the territory of the other Contracting Party

b) the term "indirect holdings" means holdings taken by a company having its registered office in the territory of a Contracting Party in another company or economic activity located in the same territory where the former company is formed with the participation in the capital of an investor of the other Contracting Party.

Article 3.

Each Contracting Party undertakes to provide in its territory fair and equitable treatment to investments of investors of the other Party. Such treatment shall be at least equal to that accorded by each Contracting Party to investors of the most favored nation.

Article 4.

Investments which have been the subject of a special commitment by one of the Contracting Parties to investors of the other Party shall be governed by the terms of that commitment, to the extent that it contains provisions more favorable than those provided for in this Convention.

Article 5.

Investors of one of the Contracting Parties shall benefit for their investments in the territory of the other Party, as well as for the exercise of professional and economic activities related to such investments, from the most-favored-nation regime.

However, the most-favored-nation treatment shall not extend to privileges which a Contracting Party grants to investors of third States by virtue of its participation in or association with economic and customs unions, common markets, free trade areas or regional economic organizations.

Article 6.

1. Investments made by investors of one of the Contracting Parties in the territory of the other Party may not be expropriated, nationalized or subjected to other measures having the same effect or character except for public interest purposes, in a non-discriminatory manner as compared to investments of any third country, following a legal procedure and against payment of a fair compensation

2. The amount of such compensation shall correspond to the actual value of the property, rights and interests which were the subject of any of the measures referred to in the preceding paragraph at the date when such measure was taken.

3. No later than the date of such action, an appropriate procedure shall be provided for determining the amount and payment of the compensation, which shall be effectively realizable, paid without delay and freely transferable.

Article 7.

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant to such investors, with respect to their investments, the free transfer of:

(a) profits, dividends and other income derived from the investments ;

(a) profits, dividends and other income derived from the investments; (b) royalties derived from intangible rights designated in Article 2;

c) Payments made for the repayment of loans obtained to make the investments and for the payment of interest thereon;

d) Proceeds from the total or partial sale or liquidation of the investments, including capital gains or increases in the invested capital;

e) The indemnities resulting from the measures provided for in Article 6.

The transfer of the above-mentioned sums shall be effected in accordance with appropriate procedures, applied equitably, in good faith and on a non-discriminatory basis, after payment of taxes of all kinds due by the investor in the State where the investment is made, without prejudice to the application of the tax agreements in force between the two States.

The nationals of each Contracting Party authorized to work in the territory of the other Contracting Party for the purpose of carrying out economic and professional activities related to the investments covered by this Agreement shall also be authorized to transfer to their country of origin an appropriate amount of their remuneration, in accordance with the legislation of each Contracting Party.

The transfers referred to in the preceding paragraphs shall be made without delay, in the convertible currency in which the investment was made or in another convertible currency, if so agreed between the investor and the competent authorities, and at the official rate of exchange applicable on the date of the transfer.

Article 8.

1. If a dispute remains between an investor of a Contracting Party and the other Contracting Party concerning the amount of compensation claimed, after the exhaustion of the remedies available under the law of the Contracting Party in whose territory the investment was made the Contracting Parties recognize the right of each Party to the dispute to initiate before the International Centre for Settlement of Investment Disputes (ICSID), in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on March 18, 1965, the procedure provided for in the said Convention, with a view to the settlement of the dispute by arbitration.

2. However, the condition mentioned in paragraph 1 of this Article, relating to the exhaustion of the remedies available under the legislation of the Contracting Party in whose territory the investment was made, may no longer be invoked by that Party against the investor of the other Party after a period of two years from the date of the first act of litigation for the settlement of the dispute by the courts.

3. Each Contracting Party undertakes to comply with the decision of ICSID.

Article 9.

To the extent that its legislation so provides, each Contracting Party may, on a case-by-case basis, grant its guarantee to investments made by investors of that Party in the territory of the other Party, if such investments have first obtained the approval of the latter Party.

Article 10.

If one of the Contracting Parties, by virtue of a guarantee given in accordance with the provisions of Article 9 above for an investment made in the territory of the other Party, makes payments to its own investors, it shall thereby be subrogated to the rights and actions of the said investors arising out of the documents relating to the making of the investment.

The subrogation of rights shall also extend to the right to transfer referred to in Article 7 above. The Contracting Party which has made payments to its own investors shall not be entitled to greater rights than those of the covered investor and shall have such rights after the payment of taxes and duties and the fulfillment of other obligations provided for in the documents relating to the realization of the investment.

However, in the case of investments referred to in Article 9 above, if an appeal has been filed with ICSID, the subrogation to its own investors of the Contracting Party that made payments to them shall apply only to the rights recognized to them by the decision of that court.

Article 11.

Investments made by investors of one of the Contracting Parties in the territory of the other Party and existing at the time of entry into force of this Agreement shall also be subject to the provisions of this Agreement.

Article 12.

Any dispute concerning the interpretation or application of this Agreement which has not been settled through diplomatic channels within six months may be submitted, at the request of either Contracting Party, to an arbitral tribunal to be constituted in the following manner:

Each of the Contracting Parties shall appoint an arbitrator within two months from the date of receipt of the request for arbitration. The two arbitrators so appointed shall select, within four months of the notification of the Party which last appointed its arbitrator, a third arbitrator who is a national of a third State.

In the event that one of the opposing Parties has not appointed an arbitrator within the time limit set, the other Party may request the Secretary-General of the United Nations to appoint an arbitrator. The same shall apply, at the request of either Party, if the two arbitrators fail to agree on the choice of a third arbitrator.

The Contracting Parties may agree in advance to designate, for a renewable period of five years, the person who will act as the third arbitrator in the event of a dispute.

The arbitral tribunal shall deliberate in accordance with the provisions of this Convention and of other Agreements concluded between the Contracting Parties and in accordance with the general principles of international law. It shall take its decisions by a majority vote. Such decisions shall be final and binding and shall be enforced by the Contracting Parties.

The arbitral tribunal shall determine its own rules of procedure.

Each Contracting Party shall bear the expenses of the arbitrator appointed or designated in accordance with the third paragraph above. The costs of the chairman and the other costs shall be borne by both Contracting Parties in equal shares.

Article 13.

The present Agreement shall be approved or ratified in accordance with the constitutional provisions in force in each State.

It shall enter into force on the first day of the second month following the date of the exchange of notifications that these provisions have been fulfilled.

It is concluded for an initial period of ten years and shall remain in force thereafter unless either Contracting Party denounces it through diplomatic channels with one year's notice.

In the event of denunciation, the present Agreement shall remain in force for investments made during the period of its validity for a period of fifteen years.

Done in Paris, on December 16, 1976, in two original copies, in the French and Romanian languages, both texts being equally authentic.

For the Government of the French Republic,

Raymond Barre.

For the Government of the Socialist Republic of Romania,

Manea Manescu.