

Agreement between the Swiss Federal Council and the Government of Romania on the Promotion and Reciprocal Protection of Investments

The Swiss Federal Council and the Government of Romania,
Hereinafter referred to as the "contracting parties"

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

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party,

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) the term means investor in respect of either Contracting Party,

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies registered partnerships, corporations or other organizations, which are constituted or otherwise organised under the law of that Contracting Party and having their seat together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities, where they are located, which are effectively controlled by nationals of that Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party.

(2) The term "investment" includes all categories of assets and in particular:

(a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, pledges;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having an economic value;

(d) Intellectual and industrial property rights, such as copyrights, patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indications of source, as well as know-how and goodwill; and

(e) The concessions, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

A change in the form in which assets are invested or reinvested shall not affect their quality of investment.

(3) The term means the returns derived from an investment amounts and shall include in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, fees and management of technical assistance or other, regardless of the mode of payment of such income.

(4) The term territory means the territory of a contracting party including the territorial waters and the continental shelf over which the State concerned exercises its sovereign rights in accordance with international law.

Article 2. Encouragement , Admission

(1) Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations the necessary permits in connection with such an investment including authorizations for the commitment, at the choice of the investor, technical and administrative staff, regardless of nationality.

Article 3. Protection , Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, increasing the sale or liquidation of such investments. in particular, each Contracting Party or its competent authorities shall issue authorisations referred to in article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall in its territory fair and equitable treatment to investments of investors of the other contracting party. this treatment shall not be less favourable than that granted by each contracting party to investments made within its territory or by its own investors than that granted by each contracting party to investments made in its territory by investors of a third State, if the latter is more favourable treatment.

(3) The most-favoured-nation clause shall not be construed so as to oblige one contracting party to extend to investors and investments of investors to the other contracting party of the advantages resulting from a customs union or economic or any existing or future Free Trade Area of which either of the contracting parties is or becomes a member. this treatment shall not apply to advantages which either of the Contracting Parties accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis and on matters relating to taxation.

Article 4. Free Transfer

(1) Each Contracting Party in whose territory of investors of the other Contracting Party has made investments, to grant those investors the free transfer of payments related to these investments, including:

- (a) Income under article 1, paragraph (3) of this Agreement;
- (b) The amounts relating to loans or other obligations vuedel' investment;
- (c) The proceeds from the total or partial alienation, sale or liquidation of an investment.

(2) Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the Contracting Party in whose territory the investment has been made.

Article 5. Dispossession , Compensation

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other contracting party except for reasons of public interest as defined by law and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the amount of compensation shall include interest, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto. resulting payments shall be freely transferable without delay.

(2) Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, rebellion or state of emergency, which took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with Article 3, paragraph (2) of this Agreement. they shall be entitled, in any event, compensation.

Article 6. Investments Made Prior to the Agreement

This Agreement shall also apply to investments in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party prior to the entry into force of this Agreement. however, the Agreement shall not apply to disputes arising before its entry into force.

Article 7. Additional Obligations

(1) If the legislation of either Contracting Party shall accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, such legislation shall prevail over this agreement to the extent that it is more favourable.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other contracting party.

Article 8. Subrogation

If a Contracting Party or its designated agency has made a payment to one of its investors under any financial guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other contracting party, the latter recognise the assignment of any right or title to the investor to the former Contracting Party or its designated agency by it on the basis of the principle of subrogation. the other Contracting Party shall be entitled to deduct taxes and other public charges due and payable by the investor.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other contracting party and without prejudice to the provisions of article 10 of this Agreement (disputes between contracting parties), consultations will take place between the parties concerned with a view to solving the case to the extent possible amicably.

(2) If these consultations do not result in a solution within three months from the date of request for the settlement, the investor may submit the dispute, at his choice, for arbitration:

(a) The competent court of the Contracting Party in whose territory the investment has been made;

(b) The International Centre for the Settlement of Investment Disputes (ICSID, established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March; 1965) 1;

(c) To an ad hoc arbitral tribunal which, unless otherwise agreed by the parties the *diffé-rend*, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party consents by this Act to submit a dispute concerning an investment to conciliation or to international arbitration.

(4) The Contracting Party which is a party to the dispute may, at any stage of the proceeding concerning the investment disputes, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the incurred damage or loss.

Article 10. Disputes between Contracting Parties

(1) Disputes between contracting parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within 12 months from the date on which the dispute has arisen, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint an arbitrator. the two arbitrators so nominated shall appoint a chairman who shall be a national of a third State.

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

(4) If the two 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 specified under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from exercising his mandate or if he is a national of either Contracting Party, the designations shall be made by

the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

(7) Each Contracting Party shall assume the cost of the arbitrator it has appointed 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.

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

Article 11. Final Provisions

(1) This Agreement shall enter into force 30 days after the date on which the contracting parties have notified each other that the legal requirements for the entry into force of this Agreement have been completed. it shall remain in force for an initial period of ten years. if it is not officially six months notice before the expiry of this period, there shall be considered on the same terms as renewed for a period of ten years and so on.

(2) In the event of termination, the provisions of articles 1 to 10 of this Agreement shall apply for a period of ten years for investments made prior to the termination of the Agreement.

IN WITNESS THEREOF the Undersigned, being duly authorized by their respective Government. have signed this Agreement

Done at_____, on_____, in two originals, in French, Romanian and English, each text being equally authentic. In case of divergency, the English text shall prevail.