

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF ROMANIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Arab Emirates and the Government of Romania (hereinafter collectively referred to as the Contracting Parties and each referred to as a Contracting Party).

Desiring to create favourable conditions for greater economic cooperation between them and particularly for investments by investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting Parties.

Have agreed as follows:

Article 1.. Definitions

For the purposes of this Agreement:-

(1) The term 'investment' shall comprise every kind of asset invested by a natural or legal person of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, regulations of that Contracting Party. Without restricting the provisions of the forgoing the term 'investment' shall include:

(a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights such as placement and deposits etc;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting Party or any of its natural or legal persons and returns retained for the purpose of re-investments;

(c) Claims to money or to any performance having economic value associated with an investment;

(d) Copyrights, trademarks, patents, industrial designs and other industrial property rights. know-how, trade secrets, trade names and goodwill;

(e) Any rights conferred by law or contract and any licences and permits pursuant to law, including the rights to search for extraction and exploitation of natural resources. Any alteration of the form in which assets are invested shall not affect their classification as investments. provided that such alteration is not contrary to the admission, if any, granted in respect of the assets originally invested.

(2) The term 'investor' shall mean any natural or legal persons who invest in the territory of the other Contracting Party.

(3) The 'natural person' shall mean:

(i) In respect of Romania, natural person having Romanian citizenship in accordance with Romanian laws and regulations;

(ii) In respect of the United Arab Emirates, all individuals possessing the nationality of the United Arab Emirates in accordance to rules of the constitution and promulgated laws.

(4) The term 'legal person' shall mean with respect to either Contracting Party, any entity established in accordance with, and recognized as legal person by the law of the said Contracting Party, such as public and private companies, corporations. business associations, authorities, partnerships, foundations, firms. institutions, establishments, agencies. development funds. enterprises, cooperatives and organizations or other similar entities irrespective of whether their liabilities are limited or otherwise, which are permitted to make investments.

(5) The term 'returns' shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, share dividends, royalties, management, technical assistance or other fees irrespective of the form in which the returns are paid.

(6) The term 'territory' means:

i) With respect to Romania, territory under its sovereignty as well as territorial sea, continental shelf and economic exclusive zone over which Romania exercises, in conformity with international law, sovereign rights or jurisdiction;

ii) With respect to the United Arab Emirates the territory under its sovereignty as well as territorial sea, airspace and submarine areas over which the United Arab Emirates exercises, in conformity with international law, sovereign rights including mainlands and islands under its jurisdiction.

(7) The term 'Associated activities' includes the organization, control, operation, maintenance and disposal of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for imports.

(8) The term 'freely usable currency' means the United States Dollar, Pound Sterling, Deutschmarks, Swiss Francs, French Francs, Japanese Yen or other currency that is widely used to make payments for international transactions and for which there are ready buyers in the principal exchange markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and, in exercise of powers conferred by its laws, and regulations shall admit such investments and activities associated therewith.

(2) Once established, investments shall at all times enjoy full protection and security, in a manner consistent with international law.

(3) Each Contracting Party shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting Party shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.

(4)

i) Each Contracting Party shall endeavour to take the necessary measures in accordance with its legislation for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting Party.

ii) Investors of either Contracting Party shall be entitled to apply to the competent authorities in the host Contracting Party for the appropriate facilities, incentives and other forms of encouragement and the host Contracting Party shall grant them all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host Contracting Party.

(5) With respect to its tax policies, each Contracting Party should strive to accord fairness and equity in the treatment of investment of investors of the other Contracting Party, in accordance with the foreign investments law.

(6) The Contracting Parties shall periodically consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where investments from one Contracting Party into the other may be most beneficial in the interest of both Contracting Parties.

(7) To attain the objectives of this Agreement, the Contracting Parties shall encourage and facilitate the formation and establishment of the appropriate joint legal entities between the investors of the Contracting Parties to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host Contracting Party.

(8) Investors of either Contracting Party shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host Contracting Party. The Contracting Parties shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in

accordance with the laws and regulations of the two Contracting Parties.

(9) Each Contracting Party shall seek as far as practicable to avoid performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

(10) Each Contracting Party undertakes to provide effective means of asserting claims and enforcing rights with respect to investment Agreement, 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 their adjudicatory authority.

(11) Each Contracting Party shall make public all laws, and regulations, that pertain to or affect investments.

(12) Investments of either Contracting Party or its natural or legal persons shall not be subject to sequestration, confiscation or any similar measures and shall enjoy full and complete protection and safety in the territory and in the maritime areas of the other Contracting Party.

Article 3. Most-favoured-nation Provisions

(1) Each Contracting Party shall in its territory accord to the investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other activity associated therewith, treatment not less favourable than that which it accords to its own investors or to investors of any third State.

Article 4. Exceptions

The provisions of this Agreement relating to the granting of treatment not less favourable than that accorded to its own investors or the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- i) Any existing or future customs union, an economic union or free trade area or a common external tariff area or a monetary union or similar international agreement or other forms of regional or sub-regional cooperation arrangements to which either of the Contracting Parties is or may become a party; or
- ii) Any international or regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or movement of capital or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Damage or Loss

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

(2) Without prejudice to Paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damages or losses in the territory of the other Contracting Party resulting from:

- (a) Requisition of their investment or property by its forces or authorities.
- (b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt and adequate compensation for the damages or losses sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be made in freely usable currency and freely transferable without delay.

Article 6. Nationalization or Expropriation

(1)

i) Neither Contracting Party shall take any measures of expropriation or nationalization, requisition or any other measures of like effects such as freezing, compulsory sale of all or part of an investment. except when such measure: is done for a public purpose, is accomplished under due procedures of law, is not discriminatory, does not violate any specific provision or contractual stability or expropriation contains in an investment agreement between the natural and legal persons concerned and the party making the expropriation, it is in accordance with and from a competent court, is accompanied by prompt, adequate and effective compensation.(a) Is done for a public purpose,

(b) Is accomplished under due procedures of law,

(c) Is not discriminatory,

(d) Does not violate any specific provision or contractual stability or expropriation contains in an investment agreement between the natural and legal persons concerned and the party making the expropriation,

(e) It is in accordance with and from a competent court,

(f) Is accompanied by prompt, adequate and effective compensation.

ii) The investor shall have the right to contest against the expropriation or any such measures to the competent court of the Contracting Party which have taken these measures,

iii) Such compensation shall be computed on the basis of the market value of the investment immediately prior to the moment of time when the decision for nationalization or expropriation was announced or become publicly known and shall be determined in accordance with recognised principles of valuation such as market value; where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which he would have been had the compensation been paid immediately after the date of expropriation or nationalization. To achieve this goal the total compensation shall include an appropriate interest at a commercially reasonable rate as agreed upon by both Parties or at such rate as prescribed by law, for the currency in which the investment is denominated from the date of nationalization or expropriation until the date of payment.

iv) When a Contracting Party nationalizes or expropriates the investment of a legal person which is established or licenced under the law in force in its territory and in which the other Contracting Party or any of its investors owns shares, stocks, debentures or other rights of interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be repatriated.

Such compensation shall be determined and paid in accordance with the provisions of Paragraph (I)(iii) of this Article.

Article 7. Repatriation of Capital and Returns

(1) Each Contracting Party shall guarantee without delay the transfer out of its territory in any freely usable currency of:-

(a) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other returns, accruing from any investment made by an investor of the other Contracting Party;

(b) The proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the other Contracting Party;

(c) Funds in repayment of borrowings;

(d) Earnings of the nationals who are allowed to work in the investment made in the territory of the other Contracting Party;

(e) Additional funds necessary for the maintenance of the investment.

(2) Without restricting the provisions of Article 3 of this Agreement the Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investment; made by investors of any third State.

(3) The exchange rates applicable to such transfers in paragraph (1) of this Article shall be the rate of exchange prevailing at the date of transfer.

(4) The term 'without delay' means the transfers made within a period normally required to prepare the formalities of transfer. The time runs 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 circumstances, a period of two months.

Article 8. Subrogation

(1) If a Contracting Party (or its designated Agency) makes a payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host Contracting Party, or has otherwise become subrogated to any of the rights of such investors with respect to such investors, the host Contracting Party shall recognize:-

(a) The right of the other Contracting Party (or its designated Agency) arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) That the other Contracting Party (or its designated Agency) is entitled by virtue of subrogation to enforce such right.

(2) If such other Contracting Party acquires any amounts in such manner as above, it shall be accorded in respect thereof a treatment not less favourable than that accorded to the funds of investors of the host Contracting Party or of any third Party deriving from investments or associated activities similar to those in which the party indemnified was engaged.

Article 9. Settlement of Investment Disputes

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party concerning investment shall be settled amicably between the disputing parties.

(2) If such disputes cannot be settled amicably then each Contracting Party consents to submit either to the competent court of the host Contracting Party or to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March, 1965 (hereinafter referred to as the "the Convention") any dispute arising between that Contracting Party and an investor of the other Contracting Party which involves:

i) An obligation entered into by that Contracting Party with the investor of the other Contracting Party regarding an investment or associated activities made by such investor: or

ii) An alleged breach of any right conferred or created by this Agreement with respect to an investment or associated activities made by such investor.

(3) If a legal person which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by investors of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as an investor of the other Contracting Party.

(4)

i) If any dispute of the type referred to in paragraph 2 should arise, the Contracting Party and the investor concerned shall seek to resolve the dispute through consultation and negotiation. If the dispute cannot thus be resolved within three (3) months, then if the investor concerned also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either Contracting Party to the dispute may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as set forth in Articles 28 and 36 of the Convention, provided that the investor concerned has not submitted the dispute to the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Contracting Party that is party to the dispute.

ii) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the opinion of the investor concerned shall prevail. The Contracting Party which is a party to the dispute shall not raise as an objection, defence, or right of set-off at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received pursuant to an insurance or guarantee contract an indemnity or other compensation for all or part of its losses or damages.

(5) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

i) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decided that the dispute is not within the jurisdiction of the Centre, or

ii) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 10. Settlement of Disputes between Contracting Parties

(1) Should any disputes arise concerning the interpretation or application of this Agreement the Contracting Parties shall try to settle them by negotiations.

(2) If the disputes cannot be so settled they shall, upon the request of either Contracting Party, be submitted to an ad hoc Arbitral tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way: within three months from the receipt of the request for arbitration, 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 act as Chairman of the Tribunal (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two arbitrators.

(4) If within the period specified in Paragraph (3) of this Article either Contracting Party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice_President also happens to be a national of either Contracting Party or 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 appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal shall determine its own procedures.

Article 11. Application to Investments

(1) This Agreement shall also apply to investments made in the territory of either Contracting Party in accordance with its legislation or rules or 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 until entry into force of this Agreement.

Article 12. Relation between Governments

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 13. Application of other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by other agreements to which both the Contracting Parties are parties or general principles of law commonly recognized by both Contracting Parties or domestic law of the host Party, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to their cases.

(2) Investments subject to special contracts or commitments undertaken by one Contracting Party with respect to the investors of the other Contracting Party shall be governed, notwithstanding the provisions of this Agreement, by the terms of these contracts and commitments in so far as their provisions are more favourable than those provided by this Agreement.

Article 14. Entry Into Force

This Agreement shall enter into force thirty (30) days after the latter date on which either Contracting Party notifies the other that its constitutional requirements or laws for the entry into force of this Agreement have been fulfilled.

Article 15. Duration and Termination

(1) This Agreement shall remain in force for a period of ten (10) years and shall continue in force thereafter for similar period or periods unless one year before the expiry of the initial period or any subsequent period either Contracting Party notifies the other in writing of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination of this Agreement.

(3) The attached Protocol shall form an integral part of the Agreement.

Done in duplicate at Abu Dhabi on this 11th day of April 1993, corresponding to H.G. 19 Shawal 1414, in Arabic, Romanian, and English all texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

AHMED HUMAID AL-TAYER

MINISTER OF STATE FOR FINANCE AND INDUSTRY

FOR THE GOVERNMENT OF ROMANIA

MR. FLORIN GEORGESCU

MINISTER OF STATE

MINISTER OF FINANCE

Protocol

At the signing today of the Agreement between the Government of the United Arab Emirates and the Government of Romania on the Promotion and Protection of Investments, the undersigned have agreed upon the following provisions which shall form an integral part of this Agreement;

1. With respect to Article 7, without prejudice to its requirements, the Government of Romania shall endeavour during its transition to full convertibility of the "leu" to take appropriate steps to improve the efficiency of the procedures for the transfer of investment returns.

In witness whereof the undersigned, duly authorised thereto, by the respective Governments have signed this Protocol.

Done in duplicate at Abu Dhabi this 11th of April, 1993 corresponding to 19 Shawal 1414 H.G. in the Arabic, Romanian and English languages, all texts being equally authentic.

In the case there is any divergence of interpretation of this Protocol, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

AHMED HUMAID AL-TAYER

MINISTER OF STATE FOR FINANCE AND INDUSTRY

FOR THE GOVERNMENT OF ROMANIA

FLORIN GEORGESCU

MINISTER OF STATE

MINISTER OF FINANCE