# AGREEMENT BETWEEN THE GOVERNMENT OF THE PORTUGUESE REPUBLIC AND THE GOVERNMENT OF ROMANIA FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Portuguese Republic and the Government of Romania hereinafter referred to as the Contracting Parties:

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties;

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties;

Have agreed as follows:

## Article 1.

For the purpose of this Agreement:

1 — The term «investor» means:

a) In respect of the Portuguese Republic, natural persons having Portuguese Nacionality, according with its applicable law;

In respect of Romania, natural persons who, according to its applicable law, are considered to be its citizens;

b) Legal persons, including companies, corporations, business associations and other organizations, which have a main office in the territory of one of the Contracting Parties and are constituted and function in accordance with the law of that Contracting Party.

2 — The term «investment» means every king of assets and rights related to investments made in accordance with the laws of the Contracting Party where it takes place, including mainly but not exclusively:

a) Movable and immovable property and any other property rights;

b) Rights attaining to shares, bonds or other forms of interests in the equity of companies, as well as other forms of participation;

c) Claims to money or any other performance having an economic value;

d) Intelectual property rights, such as copyrights, rights, patents, industrial designs or models, trade or service marks, trade names, know-how and goodwill;

e) Concessions conferred by law, including concessions to prospect, research and exploit natural resources.

Any alteration of the form in which assets and rights are invested or reinvested shall not affect their character as investment.

3 — The term «returns» means the amounts yielded by investments, in a given period, such as profits, dividends, interests, royalties or other forms of income, including all payments on account of technical assistance or management.

4 — The term «liquidation of investment» means that the investment has ceassed in accordance with the proceedings established by legislation in force in the territory of the Contracting Party in which the investment in question has been made.

5 — The term «territory» means the territory of either of the Contracting Parties, as defined by their respective laws, including the territorial sea, as well as the continental shelf and the economic exclusive zone, over which the Contracting Party exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

## Article 2.

Both Contracting Parties shall mutually promote and protect in their respective territories investments of the investors from the other Contracting Party, admit such investments in accordance with their laws and regulations and accord them fair and equitable treatment and protection, on a basis of reciprocity.

## Article 3.

1 — Neither Contracting Party shall in its own territory subject investments made by investors from the other Contracting Party to treatment less favourable than that accorded to investments made by investors of any third State.

2 — Neither Contracting Party shall subject investors of the other Contracting Party to treatment less favourable than that accorded to investors of any third State with regard to the activity related to their investments in the territory of the first Contracting Party.

3 — The foregoing provisions of this Article do not affect more favourable treatment already accorded or to be accorded by the Contracting Parties to investments made by investors from third States resulting from:

a) Membreship of customs unions, free trade areas and organizations or other types of assistance, cooperation or economic integration;

b) Agreements on avoidance of double taxation and other agreements of a fiscal nature.

## Article 4.

1 — Each Contracting Party shall grant to investments made by investors of the other Contracting Party full protection and security.

2 — Neither Contracting Party shall subject investments made by investors of the other Contracting Party to nationalisation or expropriation or to any other measures that directly or indirectly deprive thouse investors of their investments unless the following conditions are complied with:

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

b) The measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;

c) The measures shall be taken against indemnity.

3 — The indemnity referred to in c) above must match the market value of the investment affected by those measures referred to in paragraph 2 at the time immediately before those measures came into public knowledge, plus interest, applied until the date of its payment. Those interests shall be calculated in accordance with the rate applicable to banking active operations.

4 — The indemnity foreseen above shall be paid without delay, in a freely convertible currency and transferable without restriction.

5 — Investors from one of the Contracting Parties whose investments suffer losses in the territory of the other Contracting Party due to war or other armed conflit, national emergency or other similar occurence, shall receive no less favourable treatment from this Contracting Party with regard to repayment, compensation, indemnity or other retributions than that paid to investors from third States.

6 — Each Contracting Party shall apply to investors of the other Contracting Party, in relation with the subjects foreseen in this article, the most favourable nation treatment.

## Article 5.

1 — Pursuant to its own legislation, each Contracting Party guarantees investors from the other Contracting Party the immediate and free transfer of sums related to investments, after the fulfilment of due tax obligations, such as:

a) Capital and additional amounts necessary to maintain or increase the investment;

b) Returns from the investments;

c) Funds in service, repayment and amortisation of loans;

d) The apropriate amounts due to the employees that have been authorized to work in activities related to an investment made by an investor from one of the Contracting Parties in the territory of the other Contracting Party;

e) Indemnities, compensations and other payments foreseen in article 4;

f) The proceeds from the liquidation of the investment.

## Article 6.

1 — Should either of the Contracting Parties make any payment to one of its investors as a result of a guarantee granted for an investment made in the territory of the Contracting Party, or should a natural or legal person of one of the Contracting Parties make any payment to the investor concerned, as a result of an insurance or reinsurance contract covering non-comercial risks of an investment in the territory of the other Contracting Party, the Party and the natural or legal person concerned shall be subrogated to the rights and shares of this investor, and may exercise them according to the same terms and conditions as the original holder.

2 — The Contracting Party in the territory of which the investment granted or insured, as foreseen above, has been made will grant to the subrogator the same treatment given to the original holder of the investment.

## Article 7.

1 — For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case, as far as possible, amicably.

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

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

b) The International Centre for Settlement of Investment Disputes (ICSID) provided for 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; or

c) Ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Comission on International Trade Law (UNCITRAL).

3 — Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

4 — The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

5 — The court decision or the arbitration award, as the case will be, shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

## Article 8.

1 — Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations between the Contracting Parties through diplomatic channels.

2 — Should the Contracting Parties fail to reach such a settlement within twelve months after entering into negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3 — Such a tribunal shall be constituted for each individual case in the following way:

Within three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the

tribunal. Those two members shall then select a national from a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4 — If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any 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 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.

5 — The Chairman and the Members of the tribunal have to be nationals of States with which both Contracting Parties maintain diplomatic relations.

6 — The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement concluded between the Contracting Parties as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

7 — Each Contracting Party shall bear the costs of its own member of the tribunal 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.

## Article 9.

The present Agreement shall also apply to investments in the territory of a Contracting Party made 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 that have arisen before its entry into force.

## Article 10.

Should the provisions in any other international agreement concluded or coming to be concluded by the Contracting Parties, or the domestic regulations of either Party establish a more favourable system than the one foreseen in this Agreement, then this more favourable system shall take precedence over this Agreement.

## Article 11.

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

## Article 12.

1 — This Agreement shall enter into force on the date of the last written notification of the Contracting Parties that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of fifteen years.

2 — If twelve months before the date of expiration of the Agreement neither of the Contracting Parties makes a written notification to the other Contracting Party of its decision to terminate this Agreement, it shall be considered automatically renewed in the same terms and for successive periods of five years.

3 — In case this Agreement is terminated, the provisions of Article 1 to 11 shall remain in force for a further period of ten years in regard to investments made before the termination of this Agreement becomes effective.

Done in Bucharest on November, 17, 1993, in Portuguese, Romanian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Portuguese Republic:

Vitor Angelo da Costa Martins.

For the Government of Romania:

Dan Mogos.