

# **AGREEMENT BETWEEN THE REPUBLIC OF ROMANIA AND THE REPUBLIC OF BOLIVIA ON PROMOTION AND PROTECTION OF MUTUAL INVESTMENTS**

Romania and the Republic of Bolivia, hereinafter called as "the Parties";

Desiring to intensify economic cooperation between both countries;

Intending to create and maintain favorable conditions for investments by investors of the contracting parties involving the transfer of capital to the other Contracting Party;

Recognizing that the promotion and reciprocal protection of investments under this agreement will help to stimulate economic prosperity of both countries;

Conscious of the need to establish an appropriate legal framework to regulate and guarantee the promotion and reciprocal protection of investments between both countries;

Agree as follows:

## **Article I. Definitions**

For the purposes of this Agreement:

1. The term "investment" refers to all categories of assets or rights in relation to an investment, provided that it is done in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and shall include, in particular:

- a) Ownership of movable and immovable property and other real rights;
- b) shares, parts and any other kind of participation in companies in the territory of either Contracting Party;
- c) Reinvestment of profits;
- d) claims or any other benefit having economic value; loans are included only if they are directly linked to a specific investment;
- e) Intellectual property rights, including copyright and industrial property rights;
- f) Concessions authorized by law, including concessions for prospecting, exploration, extraction, mining and industrialization of natural resources.

Any change in the legal form in which assets are invested or reinvested and capital will not affect their character as investment under this Agreement.

2. The term "investor", means for each Contracting Party, someone who is investing in the territory of the other Contracting Party under this Agreement and under the following subjects:

- a) natural persons who, in accordance with the legislation of one Contracting Party, are considered its citizens in terms of Romania and nationals in terms of the Republic of Bolivia;
- b) legal entities established under the legislation of one Contracting Party, who have their headquarters and main economic activities, in the territory of the contracting parties;
- c) legal entities established under the laws of any country that are controlled mostly by investors mentioned in subparagraphs a) and b) of this paragraph.

3. The term "income" means all amounts produced by an investment, namely profits, dividends, interest, royalties and similars.

4. The term "territory" means:

- In regard to Romania, the Romanian territory, including the territorial sea and exclusive economic zone over which Romania exercises, in accordance with domestic law and international law, sovereignty, sovereign rights or jurisdiction.

- In which the Republic of Bolivia, the entire space under their sovereignty and jurisdiction of the Republic of Bolivia, in accordance with its domestic law and international law.

## **Article II. Promotion and Protection of Investments**

1. Each Contracting Party shall promote and create favorable conditions in its territory for investments by investors of the other Contracting Party and shall authorize such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant, in accordance with its laws and regulations, protection and guarantees provided for in this Agreement investments made in its territory by investors of the other Contracting Party.

3. Each Contracting Party, in accordance with its laws and regulations, will allow investors of the other Contracting Party to hire specialized technical and managerial personnel of their choice regardless of nationality, in respect Romania, and nationality, in terms Republic of Bolivia,

Also, the Contracting Parties, in accordance with their legislation, allow investors of the other Contracting Party, entering into their territory in order to make investment and administrate them.

4. Each Contracting Party shall guarantee investors of the other Contracting Party free access to courts, administrative agencies and courts other bodies exercising jurisdictional authority.

5. Each Contracting Party shall publish and disseminate laws and regulations governing investments by investors of the other Contracting Party.

## **Article III. Treatment of Investments**

1. Each Contracting Party shall guarantee fair and equitable treatment in its territory, to investments made by investors of the other Contracting Party and ensure that the rights recognized under this Agreement are not impeded.

2. Each Contracting Party shall grant investments by investors of the other Contracting Party made in its territory, treatment no less favorable than those granted to investments of its own investors or investors of third parties, if this latter treatment is more favorable.

3. If a Contracting Party has granted special advantages to investors of any third country by virtue of an agreement which created a free trade area, customs union, common market, economic union or any other form of regional economic organization, or by virtue of an agreement, it wholly or mainly to taxation issues, the Contracting Party shall not be obliged to pay the investors the advantages mentioned to the other Contracting Party.

## **Article IV. Expropriation and Compensation**

1. None of the Contracting Parties shall adopt measures which relate directly or indirectly, an investor of the other Contracting Party of its investment, unless the following conditions are met:

a) measures are adopted in the public or national interest and in accordance with law;

b) the measures are not discriminatory;

c) the measures are accompanied by provisions for the payment of an adequate and effective compensation without delay .

2. Compensation will be based on the market value of the investments affected at moment immediately preceding the measure becomes of public knowledge. In the situation where it is difficult to determine this value, the compensation will be determined in accordance with principles generally accepted valuation as fair, given the size of invested capital, the devaluation of its capital repatriated by that date, the value of replacement and other relevant factors. Therefore any delay in payment of compensation, will add interest at a commercial rate established based on market value as of the date of expropriation or loss until the date of payment.

Amount of compensation, including interest, if any, will be paid in hard currency investor.

3. With regard of the legality of the nationalization, expropriation or any other measures having an equivalent effect, and with regard to the amount of compensation, the investor could submit a claim to the judicial courts and will have to comply with their decision. The compensation have to be effective.

4. Investors of either Contracting Party whose investment in the territory of one of the Contracting Party suffer losses owing to war or any other armed conflict, a state of national emergency, civil unrest or other similar events in the territory of the other Contracting Party will have to receive, by way of compensation, indemnification, compensation or other settlement, treatment no less favorable than that accorded by the Contracting Party to its own investors or to any third party. Payments under this title shall be made in a freely convertible currency.

## **Article V. Free Transfer**

1. Each Contracting Party shall authorize, without delay, the investors of the other Contracting Party, the transfer of funds resulting from investments at a convertible currency, in particular of;

a) interest, dividends, profits and other benefits after tax laws and regulations established by the Contracting Parties;

b) Foreign repay loans in connection with an investment;

c) the proceeds from total or partial sale or liquidation of investing;

d) payments that result from the settlement of a dispute and compensation "in accordance with Article IV"

2. Transfers shall be made at the exchange rate applicable on the market on the transfer date, in accordance with the laws and regulations of the Contracting Party which has admitted the investment.

## **Article VI. Subrogation**

1. If a Contracting Party or a body authorized by it has entered into a contract of insurance or other financial security against non-commercial risks in connection with an investment of one of its investors in the territory of the other Contracting Party, the latter shall recognize the right of the first contracting party to subrogate the rights of the investor, if the investor has performed a payment to the persons mentioned in the contract or to the guarantee,

2. If a Contracting Party has made payments to its investor and as a consequence it assumed its rights and obligations that investor will not be able to submit a claim requesting the rights and obligations of the other contractign party without the express authorization of the first Contracting Party and whenever these rights and obligations are effective and legally recognized by the other Contracting Party.

## **Article VII. Consultations**

The Contracting Parties shall consult in respect of any problem in the application or interpretation of this Agreement.

## **Article VIII. Settlement of Disputes between Contracting Parties**

1. Disputes arising between the Contracting Parties concerning the interpretation and application of this Agreement shall they settled, if possible, by negotiation,

2. If both Contracting Parties could not reach an agreement within six months from the date of notification of the dispute, it will be submitted at the request of either Contracting Party, to an arbitral tribunal.

This tribunal will consist of three members, each Contracting Party shall appoint an arbitrator within two months of receiving the request for arbitration, and these two arbitrators will have to nominate a chairman who shall be a national of a third State, within two months of their appointment,

3. If one Contracting Party has not nominated its arbitrator and has not followed the request of the other Contracting Party to make the appointment within a period of two months from the date of notification of the request for arbitration, the arbitrator shall be appointed at the request of that Party Contracting by the President of the International Court of Justice.

4. If the two arbitrators can not reach an agreement on electing the president take, within two months of their appointment, he shall be nominated at the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified in paragraphs 3 and 4 above, the President of the International Court of Justice is unable to perform this function or is a national of one Contracting Party, the appointment will be made by Vice-President, if the latter is unable to act or if he is a national of one Contracting Party, the next member of the Court as a function and not a national of one of the two Contracting Parties will have to make the appointment.

6. The president of the arbitral tribunal will have to be a national of a third State with which both Contracting Parties maintain diplomatic relations.

7. The arbitral tribunal will have to adopt by majority a decision. With regard to all other matters, the arbitral tribunal procedure will be established by it.

8. The arbitration award shall be final, irrevocable and binding for the Contracting Parties

9. Each Contracting Party shall have to bear the costs of its own member and the costs of its representation in the arbitral proceedings; President expenses and other expenses shall be borne in equal parts by the two contracting parties.

## **Article IX. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes arising in the context of this Agreement between one Contracting Party and an investor of the other Contracting Party, which has made investments in the territory thereof, shall be settled, if possible, amicably.

2. If the consultations do not lead to a solution within a period of six months from the date of request for settlement, the investor may refer the dispute:

(A) to the competent court of the Contracting Party in whose territory the investment was made; or

(B) to the International arbitration of the International Centre for Dispute Settlement of Investment (ICSID) created by the Convention on the Settlement Investment Disputes between States and take on people of other States, signed in Washington on 18 March 1965 or

(C) to an arbitral tribunal "ad hoc" constituted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

3. If the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment was made or the arbitral tribunal, choosing between procedures will finalize them.

4. By the effect of this Article any legal person constituted under the laws and regulations of one Contracting Party and whose shares are held prior to the occurrence of the dispute, mostly by investors of the other Contracting Party shall be treated as a legal person of the other Contracting Party.

5. The arbitration decision shall be final, irrevocable and binding on both parties. Each Contracting Party shall execute in accordance with laws and regulations.

6. Contracting Parties shall not be able to treat, through diplomatic channels, matters related to disputes submitted to judicial proceedings or international arbitration in accordance with the provisions of this Article, until the conclusion of those proceedings, unless the other party in the dispute did not comply with the court or arbitral tribunal decision, in the deadlines set in the ruling of the decision.

## **Article X. Application Domain**

This Agreement shall apply to investments made before and after the entry into force of the Agreement, by investors of Contracting Parties, in accordance with the laws of the other Contracting Party in the territory of the latter.

However, it does not apply to disputes or controversies which have arisen prior to its entry into force.

## **Article XI. Application of other Legal Norms**

1. If in the future the Contracting Party in whose territory the investment was made by the investor of the other Contracting Party promulgate legal norms that will provide treatment more favorable than that provided under this Agreement to foreign investments on its territory, those provisions will prevail over this Agreement to the extent that they are more favorable.

2. Also, if the Contracting Parties shall conclude conventions with each containing legal rules more favorable to investments in its territory of investors of the other Contracting Party, the provisions of those conventions will prevail over those contained in this Agreement.

## **Article XII. Final Provisions**

1. This Agreement shall enter into force thirty days after the Contracting Parties have notified each other that the legal requirements for the entry into force of the Agreement has been fulfilled.

2. This Agreement shall remain in force for a period of ten years and will be automatically extended for equal periods, unless one of the Contracting Parties terminated by written notice one year before the date of expiry of validity.

3. The provisions of Articles I to XI of this Agreement shall remain in force for a further period of ten years from the date of expiry, for investments made before that date.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Signed in Bucharest on October 9, 1995 in duplicate, in Romanian, Spanish and English languages, all texts being equally authentic. In case of difference of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF ROMANIA

Florin Georgescu Minister of State, Minister of Finance

FOR THE REPUBLIC OF BOLIVIA

Antonio Aranibar Quiroga, Minister of External Relations and Cults