

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON THE MUTUAL PROMOTION AND GUARANTEE OF INVESTMENTS

The Government of the Socialist Republic of Romania and the Government of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for greater economic co-operation between the two Contracting Parties and in particular to stimulate investments by investors of one State in the territory of the other State;

Conscious that the encouragement and reciprocal guarantee of investments under an international agreement will be conducive to the stimulation of investment and increase the economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset and in particular, though not exclusively, includes:

- a) Movable and immovable property and any other property or real rights such as mortgages, privileges and guarantees and any other similar rights as defined in accordance with the laws of the Contracting Party in whose territory the investment is made;
- b) Shares, stock or any other form of participation in companies;
- c) Profits reinvested, claims to money or other rights relating to services having a financial value;
- d) Copyrights, industrial property rights (such as patents for inventions, trademarks, industrial designs), technological processes, know-how, trade-names and goodwill and other similar rights;
- e) Concessions conferred by law or under contract, especially any concessions relating to the search for and/or extraction and/or exploitation of natural resources.

2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, earning quotas, capital gains, dividends, royalties and fees.

3. "Investor" means:

- a) In respect of the Socialist Republic of Romania, Romanian economic units with legal personality;
- b) In respect of Sri Lanka, natural persons having the citizenship of Sri Lanka, as well as corporations, firms or associations incorporated or constituted under the law in force in any part of the territory of Sri Lanka.

4. "Territory" shall have the same meaning as contained in the Constitution of each Contracting Party respectively.

Article 2. Applicability of this Agreement

1. The present Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party which are approved in writing by the competent authorities in accordance with the national legislation of the latter Contracting Party.

2. The provisions of the foregoing paragraph shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Guarantee of Investments

1. Each Contracting Party shall in accordance with its national legislation promote and create favourable conditions for investors of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party, in accordance with the present Agreement.

3. Each Contracting Party shall observe any obligation which it entered into with regard to investments made in its territory by investors of the other Contracting Party.

Article 4. Most Favoured Nation Treatment

1. Neither of the Contracting Parties shall in its territory subject the investors of the other Contracting Party or their investments or returns to treatment less favourable than that which it accords to investors of any third State or their investments and returns.

2. Neither of the Contracting Parties shall in its territory subject the investors of the other Contracting Party, as regards the management, use, enjoyment or disposal of their investments as well as regarding the exercise of other commercial and economic activities related to these investments, to treatment less favourable than that which it accords to investors of any third State.

3. The provisions of the present Agreement, relative to the grant of most-favoured-nation treatment shall not be applied to any advantage that either of the Contracting Parties accords to investors of third countries by virtue of its participation in or association with any existing or future customs union, free trade area, economic community or economic organisation of a regional character.

4. The provisions of the present Agreement, relating to the grant of most-favoured-nation treatment shall not be construed so as to oblige one of the Contracting Parties to accord to investors of the other Contracting Party the advantages resulting from an international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Losses

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 or riot in the territory of the latter Contracting Party, including losses occasioned by requisitioning, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

The amount regarding these compensations shall be freely transferable.

Article 6. Expropriation and Compensation

1. Investments made by investors of one Contracting Party shall not be expropriated or subjected to other measures having an effect similar to expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in accordance with duly constituted legal procedures for a public purpose and against prompt, adequate and effective compensation, which shall amount to the actual value of the investment on the date of expropriation. Such compensation shall be freely transferable and paid without delay. On the date of expropriation a proper procedure shall be established to determine the amount and method of payment of compensation.

2. From the moment it has been definitively established, the compensation shall determine payment of interests for any period of unjustified delay in making payment.

3. Where one Contracting Party expropriates the assets of a company legally incorporated or constituted in its territory and in which investors of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of the present Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation to these investors in respect of the shares they own.

Article 7. Reference to the International Centre for Settlement of Investment Disputes

1. Any legal dispute arising out of an investment between either Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

2. If a dispute regarding the amount of compensation in case of expropriation cannot be settled within six months of it being raised by either Party to the dispute in the way provided for in paragraph 1, any of the Parties to the dispute shall, unless such Parties have otherwise agreed, be entitled to submit the dispute to conciliation or arbitration by the International Centre for Settlement of Investment Disputes (called "the Centre" in this Agreement) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, Washington, 18th March 1965 (called the "Convention" in this Agreement), according to the procedure provided for in the Convention. However, each Contracting Party hereby requires the exhaustion of local administrative or judicial remedies as a condition of its consent to conciliation or arbitration by the Centre.

Article 8. Repatriation of Investment

1. Each Contracting Party shall, subject to the right of such Contracting Party in exceptional financial or economic circumstances to exercise equitably and in good faith powers conferred by its laws, guarantee in respect of investments to the investors of the other Contracting Party, the free transfer of:

- a) The invested capital;
- b) The proceeds of transfer or alienation or of total or partial liquidation of investments, including surplus-values or increases of capital invested;
- c) The payments made for the reimbursement of credits received for investment and payment of interests thereof;
- d) The income resulting from the investment of capital;
- e) The compensations resulting from measures provided for on Articles 5 and 6;
- f) The earnings of the citizens allowed to work in an investment.

2. Each Contracting Party shall issue, after fulfilment of the legal provisions pertaining to the investors, the necessary licences for the execution without delay of the transfers mentioned in paragraph 1 of the present Article.

Article 9. Transfers of Currency

Transfers of currency according to Articles 5, 6 and 8 shall be made without delay in the convertible currency in which the investment has been made or in any other freely convertible currency, if so agreed, at the official rate of exchange in force on the date of such transfer.

Article 10. Application of National Laws

All investments made by the investors of one Contracting Party in the territory of the other Contracting Party shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 11. Subrogation

If one of the Contracting Parties makes payment to its own investors under an indemnity it has given in respect of an investment made in the territory of the other Contracting Party or in respect of a part of this investment, the latter Contracting Party shall recognise:

- a) The assignment, whether under law or pursuant to a legal transaction of any right, claim and obligation of that investor to the former Contracting Party or its designated Agency, and
- b) That the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor, provided that it fulfils the obligations assumed by the investor.

The paying Contracting Party shall not under this paragraph, obtain any rights or assume any obligations other or greater than those of the insured investor.

c) The subrogated Contracting Party can assert the rights and claims and exercise the activities to the same extent and within the same limits as its predecessor in title.

Article 12. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of the present Agreement shall be settled, as far as possible, through negotiations between the two Contracting Parties. If the dispute cannot be settled within a time of six months after the commencement of negotiations, then, upon the request of either Contracting Party it shall be submitted to an arbitral tribunal.
2. The arbitral tribunal shall be constituted for each individual case, in the following way: each Contracting Party appoints one arbitrator; the two arbitrators propose, by mutual agreement, a Chairman who should be a citizen of a third State who will be appointed Chairman with the approval of the two Contracting Parties. The arbitrators shall be appointed within three months and the Chairman within five months after receipt of the request for arbitration.
3. If within the periods specified in paragraph (2) the respective appointments have not been made, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a citizen of one of the Contracting Parties or he is prevented from discharging the said function, the respective appointments shall be made by the Vice President of the International Court of Justice. If the Vice President is a citizen of either of the Contracting Parties or if he too is prevented from discharging the said function, the respective appointments shall be made by the Member of the International Court of Justice next in seniority who is not a citizen of either Contracting Party.
4. The arbitral tribunal shall, by a majority of votes, reach its decision on the basis of the provisions of the present Agreement and other agreements between the two Contracting Parties, where relevant, and on the general principles and rules of international law. Such decision shall be binding on both Contracting Parties.
5. Each Contracting Party shall bear the cost of the arbitrator it has appointed and [of] its representations in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.
6. The Tribunal shall determine its own procedure.

Article 13. Entry Into Force

The present Agreement shall be subject to ratification in accordance with the constitutional procedures of each Contracting Party and shall enter into force on the date of the Exchange of Instruments of Ratification.

Article 14. Duration and Termination

1. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.
2. In respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination.

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

SIGNED at Bucharest on the 9th of February 1981 in two originals, each in the Romanian, Sinhala and English languages, all texts being equally authentic. In case of difference of interpretation, the English text shall prevail.

For the Government of the Socialist Republic of Romania

For the Government of the Democratic Socialist Republic of Sri Lanka