

AGREEMENT
BETWEEN
THE GOVERNMENT OF ROMANIA
AND
THE GOVERNMENT OF
THE REPUBLIC OF KAZAKHSTAN
ON THE PROMOTION AND RECIPROCAL PROTECTION
OF INVESTMENTS

The Government of Romania and the Government of the Republic of Kazakhstan hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Recognizing that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of business initiative and will increase prosperity in both States,

Aware of the need to establish an adequate juridical framework which settles and guarantees the promotion and reciprocal protection of investments between both States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor of a Contracting Party" refers with regard to either Contracting Party, the following subjects who made investments in the territory of the other Contracting Party, in accordance with the national legislation of the latter:

(a) natural persons who, according to the national legislation of that Contracting Party, are considered to be citizens of its State;

(b) legal persons, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the national legislation of that Contracting Party and

Have their seat, together with real economic activities in the territory of that same Contracting Party.

(2) The term "investment" shall mean every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the national legislation of the latter, and include particularly, but not

exclusively:

- (a) movable and immovable property, as well as any other rights in rem, such as mortgages, liens, pledges;
- (b) shares, parts or any other kind of participation in companies;
- (c) claims to money or to any rights to any performance having an economic value;
- (d) intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, as well as knowhow and goodwill, and other rights recognized by the national legislation of the Contracting Parties;
- (e) concessions under public law, including concessions to search for, extract or exploit natural resources, as well as all other rights given by law, by contract or by decision of the authority, in accordance with the national legislation of the Contracting Parties.

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

(3) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interests, capital gains, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

(4) The term "territory of a Contracting Party" means:

- In respect of Romania - the territory of Romania, including its territorial sea and airspace above its territory and its territorial sea over which Romania exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zone over which Romania exercises its jurisdiction, respective sovereign rights, in accordance with its legislation and international law;
- In respect of the Republic of Kazakhstan - the territory of the Republic of Kazakhstan within the limits of overland, sea and air borders, including land, waters, bowels and air space above which the Republic of Kazakhstan carries out the sovereignty and distribute jurisdiction in accordance with its legislation and international law;

Article 2. Promotion and Admission

(1) Each Contracting Party shall, in its territory, promote as far as possible investments made by investors of the other Contracting Party and admit such investments in accordance with the national legislation of its State.

(2) When a Contracting Party shall have admitted an investment made in its territory by investors of the other Contracting Party, it shall, in accordance with its national legislation, grant the necessary permits in connection with such an investment, including authorizations for engaging foreign labor force such as top managerial and technical personnel, regardless of citizenship.

Article 3. Protection and Treatment

(1) Without prejudice to the measures adopted by the European Union, each Contracting Party shall protect within its territory, investments made in accordance with its national legislation by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments. In particular, each Contracting Party or the competent authorities of its State, shall issue the necessary authorizations mentioned in Article 2, paragraph (2) of this Agreement.

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

(3) The non-discriminatory treatment, national treatment and most favoured nation treatment provisions of this Agreement shall not apply to all actual

Or future advantages accorded by either Contracting Party by virtue of its membership of, or association with, a customs, economic or monetary union, a common market or a free trade area, to investors of its own, of Member States of such union, common market or free trade area, or of any other third State. Nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

(4) Nothing in this Agreement shall be construed as:

- a) to prevent any Contracting Party from taking any measure or action which it considers necessary for the protection of its essential security interests;
- b) to prevent any Contracting Party from taking any measure necessary for the maintenance of public order, subject that such measures are not applied in a manner which would constitute a means of arbitrary or unjust discrimination or a disguised investment restriction;
- c) to preclude a Contracting Party from applying measures that it considers necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace and security;
- d) to require a Contracting Party to furnish or allow access to any information the disclosure of which is contrary to national legislation concerning classified information.

Article 4. Free Transfer

(1) Without prejudice to the measures adopted by the European Union, each Contracting Party in whose territory investments have been made by investors of the other Contracting Party, shall grant to those investors the free transfer of the payments relating to these investments, after performance all tax obligations particularly, but not exclusively, of:

- (a) capital and additional funds required for the maintenance and enlargement of the investment;
- (b) returns;
- (c) amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;
- (d) proceeds accruing from the total or partial sale, alienation or liquidation of an investment;
- (e) any compensation owed to an investor by virtue of Article 5 of this Agreement;
- (f) earnings and other rewards of the staff engaged abroad, related to the investments.

The transfers shall be effected without any restrictions or delay in a free convertible currency, on condition that all the obligations legally due from them shall be fulfilled.

(2) Notwithstanding the provisions of paragraph (1) of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, including serious difficulties with the balance of payments impose such exchange restrictions in accordance with its national legislation and in conformity with the Articles of Agreement of the International Monetary Fund.

(3) Unless otherwise agreed with the investor, transfers shall be made, pursuant to the national legislation in force of the Contracting Party in whose territory the investment was made, at the rate of exchange applicable on the date of transfer.

(4) Notwithstanding paragraphs (1) and (2) of this Article a host Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of national laws of its State relating to:

- a) Bankruptcy, insolvency or the protection of the rights of creditors;
- b) Issuing, trading or dealing in securities;
- c) Criminal or penal offences;
- d) Reports of transfers of currency or other monetary instruments;
- e) Ensuring the satisfaction of judgments in adjudicatory proceedings.

Article 5. Expropriation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriations, nationalization or any other measures having the same nature or the same effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless the

Measures are taken in the public interest, on a non-discriminatory basis and under due process established by the national legislation of the latter Contracting Party, accompanied by provisions for the payment of prompt, effective and adequate

compensation.

(2) The compensation shall be adequate and effective and shall correspond to the fair market value of the investment at the time of the expropriation or at the time it became public knowledge, whichever is earlier. Compensation should be settled in a free convertible currency and paid without any restriction and delay. From the moment of expropriation until the moment of payment the amount of compensation shall be subject to accrued interest at a commercial rate of the Contracting Party in the territory of which the investments were made. The amount shall be determined according to the general principles of evaluation.

(3) An investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party shall, under the law of the Contracting Party making the expropriation, have the right for prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6. Compensation for Losses

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

Article 7. Scope of Application

This Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its national legislation, by investors of the other Contracting Party, whether prior to, or after the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 8. Other Obligations

(1) If the national legislation of either Contracting Party entitles the investments of the investors of the other Contracting Party to treatment more favorable than is provided for by this Agreement, such legislation shall, to the extent that is more favorable, prevail over this Agreement.

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

Article 9. Principle of Subrogation

If either Contracting Party or its designated agency makes a payment to one of its investors under any financial guarantee against non-commercial risks it has granted in regard of an investment in the territory of the other Contracting Party, the latter shall recognize, by virtue of the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or its designated agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

Article 10. Transparency

Each Contracting Party should publish immediately, or otherwise make publicly accessible the laws, rules, procedures both administrative instructions and judgments of the general application, and also the international agreements which can concern investments of the investor of other Contracting Party in the territory of the former Contracting Party.

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Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute regarding the application of the present Agreement between a Contracting Party and an investor of the other Contracting Party shall be resolved by consultations and negotiations as far as possible.

(2) If these consultations do not result in a solution within six months from the date of request for settlement, any of the parties to the dispute may choose to submit it for resolution to:

- (a) the competent court of the State of the Contracting Party in whose territory the investment has been made;
- (b) the International Centre for Settlement of Investment Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, on March 18, 1965, when both Contracting Parties are members of this Convention; or
- (c) an 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 Commission on International Trade Law (UNCITRAL).
- (3) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of the present Article.
- (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 defense 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) Any arbitration under this Article shall at the request of any party to the dispute be held in a State which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on 10 June 1958 (further - the New York Convention). For the purposes of Article 1 of the New York Convention, the disputes submitted according to this Article shall be considered as arisen from commercial relationship or transaction.
- (6) The decision shall be obligatory for the parties in dispute. Each Contracting Party shall execute the arbitral award on its territory according to the national legislation of its State.

Article 12. Settlement of Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a citizen 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 that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
- (4) If both arbitrators cannot reach an agreement as concerns 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 carrying out the said function or if he is a citizen of the State of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a citizen of the State of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a citizen of the State of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its own procedure.
- (7) Each Contracting Party shall bear the costs 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 awards of the tribunal are final and binding for each Contracting Party.

Article 13. Consultation and Amendment

- (1) Either Contracting Party may request that consultation be held on any matter concerning this Agreement. The other Contracting Party shall accord consideration to the proposal and shall afford adequate opportunity for such consultations.
- (2) Amendments to this Agreement made by the mutual consent of the Contracting Parties form an integral part of the present Agreement, shall be made in the way of separate protocols and shall enter into force according to the procedures provided for under this Agreement. In case of future evolutions of European Union law which would affect this Agreement's

provisions, the present Agreement shall be amended, if necessary, by mutual consensus of the Contracting Parties, so as to ensure the conformity of its provisions with Romania's obligations arising from the EU member status.

Article 14. Entry Into Force, Duration and Termination

(1) The present Agreement shall enter into force on the date of receipt, by diplomatic channels, of the last notification by which the Contracting Parties shall have communicated each other in writing that their internal legal procedures for the entry into force of this Agreement have been completed. The present Agreement shall remain in force for an initial period of ten years. Unless official notice of denunciation is given by diplomatic channels twelve months before the expiration of this period, the present Agreement shall be considered as automatically prolonged on the same terms for further periods of ten years.

(2) In case of written notification of denunciation of the present Agreement mentioned in paragraph 1 of the present Article, the provisions of the Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before the receipt of such notification.

(3) When necessary, in order to comply with its obligations deriving from its status of member of the European Union, Romania shall have the right to unilaterally denounce the present Agreement. In such case, the present

Agreement shall cease to apply nine months after the receipt of the denunciation note.

(4) The Agreement between the Government of Romania and the Government of the Republic of Kazakhstan on the promotion and reciprocal protection of investments, signed in Bucharest on April 25, 1996, will be terminated on the date of entry into force of the present Agreement.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Astana, on 09.07.2005, in two originals, each in the Romanian, Kazakh, Russian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For

The Government of the Romania

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For

The Government of the Republic of Kazakhstan