

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

The Government of Romania and the Government of the Republic of Lithuania, herein referred to as the "Contracting Parties",

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

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 States,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" means:

(a) (i) in respect of Romania - natural persons who, according to the law of Romania, are considered to be its citizens;

(ii) in respect of the Republic of Lithuania - natural persons who, according to the law of the Republic of Lithuania, are considered to be its citizens and persons without citizenship who have a permanent residence in the territory of the Republic of Lithuania.

(b) any entity, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat, together with real economic activities in the territory of that same Contracting Party.

(c) any entity or organization established under the law of any third state which is, directly or indirectly, controlled by natural persons, as referred in point (a) of this paragraph, of that Contracting Party or by entities having their seat in the territory of that Contracting Party.

(2) The term "investments" shall include every kind of assets and particularly, though not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

(b) shares, parts or any other kinds of participation in companies;

(c) claims to money or to any rights to any performance having an economic value;

(d) intellectual and industrial property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, know-how and good-will, as well as other similar rights recognised by the laws 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 law.

Any alteration of the form in which assets are invested or reinvested, shall not affect their character as investment, provided such an alteration is made in accordance with the host country's laws.

(3) The term "returns" means amounts yielded by an investment in particular, though not exclusively, includes profits, dividends, interests, capital gains, royalties or other fees.

(4) The term "territory means:

(i) in respect of Romania - the territory of Romania including its territorial sea as well as the exclusive economic zone over which Romania exercises sovereignty, sovereign rights or jurisdiction in accordance with its internal law and with international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea-bed and sub-soil of these waters;

(ii) in respect of the Republic of Lithuania - the territory of the Republic of Lithuania, including the territorial sea and any maritime or submarine area within which the Republic of Lithuania may exercise, in accordance with international law, rights for the purpose of exploration, exploitation and preservation of the sea-bed, sub-soil and natural resources.

Article 2. Promotion, Admission

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of citizenship.

Article 3. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations 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 its competent authorities 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 of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, in accordance with laws and regulations of that Contracting Party, 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 favourable.

(3) The most favoured nation clause shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the advantages resulting from any existing or future customs or economic union, or a free trade area, or other forms of regional economic co-operation, to which either of the Contracting Parties is or becomes a member. 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.

Article 4. Free Transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments, without undue delay, relating to these investments, particularly of:

(a) returns according to Article (1), paragraph (3) of this Agreement;

(b) amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;

(c) proceeds accruing from the total or partial sale, alienation or liquidation of an investment;

(d) the capital and additional amounts for the maintenance or extension of the investment;

(e) compensation provided for in Article (5) of this Agreement;

(f) the earnings of natural persons, as referred in Article (1), paragraph (1), point (a), of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party, in accordance with the laws and regulations of that Contracting Party.

(2) Transfers shall be made in a freely convertible currency at the exchange rate effective for current transactions on the date of transfer, unless otherwise agreed with the investor.

Article 5. Dispossession, Compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest as established by law, on a non discriminatory basis, and under due process of law. and provided that provisions be made for effective and adequate compensation.

The compensation mentioned in this paragraph shall be equivalent to the market value of the expropriated investments immediately before the expropriation occurred or the impending expropriation became public knowledge and shall be paid without undue delay. The compensation shall include interest calculated on the LIBOR basis from the date of expropriation. The compensation shall be effectively realizable and freely transferable.

Investors, whose assets are being expropriated, have a right to prompt review by the appropriate judicial or administrative authorities of the expropriating Contracting Party to determine whether such compensation conforms to the principles of this Article and the laws of the expropriating Contracting Party.

(2) Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the other Contracting Party, treatment no less favourable than that accorded to investors of any third State. Any resulting compensation shall be paid without undue delay and shall be freely transferable.

(3) Investors referred to in Article (1), paragraph (1), point (c), may not raise claims under paragraphs of this Article if compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

Article 6. Pre-agreement Investments

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 7. Other Obligations

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

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

Article 8. Principle of Subrogation

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

The former Contracting Party shall accordingly be entitled to assert any such right or claim to the same extent and subject to the same restrictions as its predecessor in title.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(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 are not held or 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 Center for the 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) 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 consents to the submission of an investment dispute to international conciliation or arbitration. The arbitral decisions shall be final and binding on both parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.
- (4) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving the 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.

Article 10. Disputes between Contracting Parties

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter 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 about 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 13) 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 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 either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (7) Each Contracting Party shall bear the cost 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 decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the laws, regulations, decisions, administrative practices or procedures or economic policies of the other Contracting Party which may have an impact on investments covered by this Agreement.

Article 12. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that all necessary constitutional requirements for the entry into force have been completed.

Article 13. Final Provisions

(1) This Agreement shall enter into force 30 days after the date on which the Contracting Parties shall have notified each other that their legal requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years. The Agreement shall continue to remain in force for further periods of 10 (ten) years unless either Contracting party shall have given official notice of termination to the other Contracting Party not later than six months before the expiration of the Agreement.

(2) In case of official notice as to the termination of the present Agreement, the provisions of the Articles 1 to 12 shall continue to be effective for a further period of ten years for investments made before official notice was given.

IN WITNESS THEREOF the Undersigned, being duly authorized by their respective Government, have signed this Agreement,

Done at Vilnius, on 8 March 1994, in two originals, in the Romanian, Lithuanian and English languages, each text being equally authentic. In case of difference of interpretation, the English text shall prevail.

For the Government of Romania

For the Government of the Republic of Lithuania