

Agreement between the Government of the Hellenic Republic and the Government of Romania on the Promotion and Reciprocal Protection of Investments

The Government of the Hellenic Republic and the Government of Romania

Hereinafter referred to as the Contracting Parties,

DESIRING to intensify their economic cooperation to the mutual benefit of both countries on a long term basis,

HAVING as their objective to create favourable conditions for investments by investors of either Party in the territory of the other Party,

RECOGNIZING that the encouragement and protection of investments, on the basis of the present Agreement, will stimulate the initiative in this field.

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 rights such as mortgages, liens or pledges,
 - b) Shares in and stock and debentures of a company and any other form of participation in a company,
 - c) Long term loans (related to investments) and claims to money or to any performance under contract having a financial value,
 - d) Intellectual and industrial property rights including rights with respect to copyrights, trademarks, trade names, patents, technological processes, knowhow, and goodwill
 - e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.
2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees:

3. "Investor" shall comprise:

- a) In respect of the Hellenic Republic: natural persons having Greek nationality, in accordance with its laws and legal persons constituted in accordance with Greek law and having their seat within its territory.
- b) In respect of Romania: natural persons having Romanian citizenship in accordance with its laws and Romanian legal persons constituted in accordance with Romanian law and having their registered offices within its territory.

4. "National" means:

- a) In respect of the Hellenic Republic, any natural person having or acquiring Greek nationality in accordance with the Greek Nationality Code
- b) In respect of Romania, any natural person having Romanian citizenship in accordance with Romanian laws and regulations.

5. "Territory" means in respect of either Contracting Party, the territory under its sovereignty as well as the territorial sea and submarine areas, over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admits such investments in accordance with its legislation.

2. Investments by investors of a 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. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, is not in any way impaired by unjustifiable or discriminatory measures.

3. Investors of either Contracting Party shall be permitted to engage top managerial and technical personnel (the level of chief of sectors included), of their choice, nationals of either Contracting Party, to the extent permitted by the legislation in force in the host State. Subject to the laws relating to the entry and sejour of aliens, this aforementioned personnel shall be permitted to enter and to remain in the territory of the other Contracting Party for the purpose of establishing and administering their investment.

4. A possible change in the form in which the investments have been made does not affect their substance as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

5. Returns from the investments and, in cases of approved reinvestment, the income ensuing therefrom enjoy the same protection as the initial investments.

6. Each Contracting Party shall make public all legislation and regulations that pertain to or affect investments in its territory by investors of the other Contracting Party.

Article 3. Most Favoured-nation and National Treatment Provisions

1. Neither Contracting Party shall subject investments in its territory owned or controlled by investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investments or to investments of investors of any third State.

2. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

3. Such treatment shall not relate to privileges or advantages which either Contracting Party accords to investors of third States:

a) On account of its membership of, or association with, a customs or economic union, a common market, a free trade area or similar institutions.

b) By virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Expropriation

Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except under the following conditions:

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

b) The measures are clear and not discriminatory, and

c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measures referred to above in this paragraph occurred or became public knowledge and it shall be freely transferable in convertible currencies from the Contracting Party, at the official rate of exchange prevailing on the date used for the determination of value. The compensation shall be transferable without delay in a freely convertible currency. The compensation shall include interest until the date of payment at an appropriate commercial rate as determined by the Central Bank of the Contracting Party,

and its amount shall be subject to review by due process of law, within the framework of the legislation of the Contracting Party in the territory of which the investment has been made.

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, riot or other similar events, including losses occasioned by requisitioning in the territory of the latter Contracting Party 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 its own investors or to investors of any third State. Resulting payments shall be freely and promptly transferable.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and its returns.

The transfers shall be effected, without delay, in a freely convertible currency to be agreed upon between the investor and the Contracting Party concerned and at the rate of exchange applicable on the date of transfer, in accordance with the laws and regulations in force, in the territory of the host country.

2. Such transfers include in particular, though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties or fees;
- e) Proceeds of sale or liquidation of the whole or any part of the investment.
- f) A portion of the salaries, wages or other earnings, provided for by the relevant legislation of each Contracting Party, received in its territory by nationals of the other Contracting Party, connected with investments covered by this Agreement.

Each Contracting Party shall issue, if so required, after fulfilment of the legal obligations pertaining to the investors, the necessary licences in order to ensure the execution without delay of the transfers.

4. "Without delay" in the meaning of this Article are considered the transfers which are made within a period normally required to prepare the formalities of transfer. The time runs from the date when the application together with necessary documents were submitted, in the proper way, to the competent authorities and should not exceed, in any case, a period of three months.

Article 7. Subrogation

If either Contracting Party or its designated Agency makes payment to one of its investors under a guarantee it has given in respect of an investment or any part thereof invested in the territory of the other Contracting Party the latter Contracting Party shall recognise:

- a) The assignment, whether under law or pursuant to a legal transaction of any right, claim or obligation from 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 and shall assume the obligations related to the investment including payment of taxes and fees.

The former Contracting Party shall accordingly, if it so desires be entitled to assert any such right or claim to the same extent and subject to the same restrictions as its predecessor entitled.

Article 8. Application

This Agreement shall also apply to investments made prior to its entry into force by investors of either Contracting Party in

the territory of the other Contracting Party consistent with the latter's legislation. However, this Agreement shall not apply to disputes already pending before organs provided for on the basis of preexisting settlement of disputes procedures, at the time of entry into force of this Agreement.

Article 9. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.
3. The arbitration tribunal shall be constituted ad hoc as follows. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, any Party to the dispute 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 of the Court is a national of any Party to this dispute or if he is otherwise prevented from discharging the said function, the Vice-President or if he is a national of any Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of any Party to the dispute shall be invited to make the necessary appointments.
5. The arbitration tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties and the generally acknowledged rules and principles of International law.
6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.
7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.
8. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be born in equal parts by the Contracting Parties.

Article 10. Settlement of Disputes between an Investor and a Host State

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning investments shall be settled amicably between the disputing Parties.
2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute at his choice:
 - a) To the competent court of the Contracting Party or
 - b) To the International Centre for the Settlement of Investment Disputes, established under the Washington D.C Convention of 18 March 1965 on the Settlement of Investment Disputes, between States and Nationals of Other States.

In the latter case the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention. The award shall be enforced in accordance with domestic law.

Each Contracting Party herewith declares its acceptance of such an arbitration procedure.

3. During arbitration proceedings or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present

Agreement.

Article 12. Consultations

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 agreed upon through diplomatic channels.

Article 13. Entry Into Force - Duration - Termination

1. This Agreement shall enter into force thirty days after the date on which the notifications that the procedures required by the laws of each Contracting Party have been completed, have been exchanged. It shall remain in force for a period of three years, unless notice of termination has been given by either Contracting Party at least six months before the date of expiry of its validity.

2. Six months before the expiry date the Contracting Parties will review the Agreement and in particular its Article 6, with a view to adapting it to the principles of market economy.

3. In respect of investments made prior to the date of the termination of this Agreement the foregoing Articles shall continue to be effective for a further period of five years from that date.

Done in duplicate in Athens on Monday, 16.9.1991 in the Greek, Romanian and English languages, all texts being equally authoritative. In case of differences of interpretation the text in the English language shall be considered as the text of reference.

For the Government of the Hellenic Republic

EFTHYMIOS CHRISTODOULOU

MINISTER OF NATIONAL ECONOMY

For the Government of Romania

EUGEN DIJMARESCU

MINISTER OF STATE

MINISTER OF ECONOMY AND FINANCE