

# **AGREEMENT**

## **Between the Government of Romania and the Government of Ukraine on promotion and protection**

### **Mutual investment**

The Government of Romania and the Government of Ukraine (hereinafter referred to as the Contracting Parties),

Wishing to enhance economic cooperation for the mutual benefit of both states,

Intending to create and maintain favorable conditions for investments by investors of a State in the territory of the other State,

Aware that the mutual promotion and protection of investments under this agreement stimulates the business initiative in this area,

Have agreed as follows:

#### **Article 1. Definitions**

For the purpose of this agreement:

1. The term investment shall include any assets invested in connection with economic activities by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with and within the limits of the latter's legislation and shall include, exclusive:

(A) property rights in movable and immovable property, as well as any other rights such as: the right to use property as the object of a mortgage or retention for debts and other similar rights;

B) shares, bonds and shares of companies or any other form of participation in a company;

C) claims or benefits of economic value associated with an investment;

(D) intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

e) concessions permitted by the legislation of the state of each Contracting Party or by bilateral agreements between Romania and Ukraine, including exploration, development, extraction and exploitation of natural resources.

Any change in the form in which the assets are invested will not affect their investment character.

2. The term investor shall designate any natural or legal person who invests in the territory of the other Contracting Party.

A) The term "natural person" shall mean any natural person having the nationality of any Contracting Party in accordance with its laws.

(B) The term "legal person" shall mean, in respect of each Contracting Party, any entity which is incorporated or constituted under its law and recognized as a legal person by it and having its seat, together with its real economic activities, within the territory of the same Contracting Party.

3. The term income shall refer to the amounts produced by an investment and includes, but not limited to, profits, interest, capital increases, shares, dividends or other fees.

4. The term "territory" shall mean, in respect of each Contracting Party, the territory under its sovereignty and the sea and submarine areas over which each Contracting Party exercises sovereign rights or jurisdiction in accordance with international law.

## **Article 2. Promoting and Protecting Investments**

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in its territory and shall allow such investments in accordance with its laws.

2. Investment by investors of each Contracting Party shall be given a fair and equitable treatment on a permanent basis, enjoying full protection and security in the territory of the other Contracting Party.

## **Article 3. Most-favored Nation and Nation-based Treatment**

1. Each Contracting Party shall grant in its territory investment and income to investors of the other Contracting Party fair and equitable treatment and not less favorable than that which it accords to the investments and incomes of its own investors or to the investments and income of investors of any third State, Or which is more favorable.

2. Each Contracting Party shall grant, in its territory, to investors of the other Contracting Party, in respect of the management, maintenance, use, enjoyment or disposal of their investments, fair and equitable treatment and not less favorable than that which it grants its own investors or any third country, or which is more favorable.

3. If a Contracting Party has admitted an investment on its territory, it shall, in accordance with its legislation, ensure the necessary permits in relation to the investment, including the employment of management and technical personnel of its choice, irrespective of nationality.

4. The provisions of paragraphs 1 and 2 of this Article shall not be construed to oblige a Contracting Party to extend to investors the other advantage of any treatment, preference or privilege which may be extended by the first Contracting Party by virtue of:

(a) any customs union or free trade area or monetary union or any similar international agreement leading to such unions or institutions or other forms of regional cooperation to which either Contracting Party is or may become a party;

(B) any international agreement or arrangement relating, in whole or in part, to taxation.

## **Article 4. Compensation for Losses**

1. If the investments of any Contracting Party's investors suffer losses due to war, armed conflict, state of national necessity, revolt, insurrection, revolt or other similar events occurring in the territory of the other Contracting Party, they shall be granted by the latter Contracting Party Compensation, compensation or other regulation, treatment no less favorable than that which the latter Contracting Party accords to its own investors or investors of any third State.

2. Without prejudice to the provisions of paragraph 1 of this Article, investors of a Contracting Party who, in any of the events referred to in this paragraph, suffer losses in the territory of the other Contracting Party as a result of:

A) the requisition of property by its forces or authorities;

B) the destruction of their property by its forces or authorities which have not been produced in combat operations or have not been required by the necessity of the situation,

They will be granted a fair and appropriate compensation for the losses incurred during the requisition period or as a result of the destruction of the property. The resulting payments will be freely transferable in convertible currency, without delay.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other Contracting Party other than in the public interest. Expropriation will take place according to the law, on a non-discriminatory basis, and will be accompanied by provisions for prompt, appropriate and effective compensation. Such compensation shall correspond to the market value of the expropriated investment immediately prior to the public expropriation or expropriation expropriation being effected without delay, shall be effectively and freely transferable in convertible currency on the basis of the official exchange rate in force on the date evaluation.

Compensation shall also include interest from the date of determination of the amount of compensation up to the date of payment on the basis of the official interest rate set by the central bank of the Contracting Party in whose territory the investment was made.

2. The affected investor shall have the right to a prompt examination by the judicial authority or other competent authority of that Contracting Party of his case and the assessment of his investment in accordance with the principles set out in this Article.

3. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws in force in any part of its territory and where the investors of the other Contracting Party have shares.

## **Article 6. Transfers**

1. The Contracting Parties shall guarantee the transfer of payments in respect of investments and income in accordance with their legislation in force. Transfers will be made in convertible currency, without any limitation and undue delay. These transfers will include, but are not limited to:

(A) capital and additional amounts for the maintenance or development of the investment;

B) profits, interest, dividends and other current income;

C) funds for repayment of loans;

D) royalties or fees;

E) the amounts resulting from the sale or liquidation of the investment;

(F) the earnings of natural persons in accordance with the law of the Contracting Party where the investments were made.

2. For the purposes of this Agreement, exchange rates shall be the official rates in force for current transactions at the date of transfer, unless otherwise agreed.

## **Article 7. Subrogation**

1. If a Contracting Party or the agency designated by it makes a payment to its own investors on the basis of a guarantee it has given in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) transfer, on the basis of law or as a result of a legal transaction in that country, of any right or claim, from the investor to the former Contracting Party or the agency designated by it;

(B) that the first Contracting Party or the agency designated by it is entitled by virtue of its subrogation to exercise the rights and claim the claims of that investor and to assume its obligations in relation to the investment.

2. The rights or claims of subrogation shall not exceed the investor's rights or prerogatives.

## **Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any disputes which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that Contracting Party shall be the subject of negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be so regulated within a period of six months, the investor shall be entitled to submit the case:

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

(B) the International Center for the Settlement of Investment Disputes concerning the applicable provisions of the Convention for the Settlement of Investment Disputes between States and Persons of Other States, opened for signature at Washington, D.C. On 18 March 1965, in the event that both Contracting Parties have become parties to that Convention; or

C) an arbitrator or an ad hoc international arbitration tribunal constituted on the basis of the Arbitration Rules of the United

Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to amend these rules.

3. Judgments or arbitral awards shall be final and binding on both parties to the dispute.

## **Article 9. Settlement of Disputes between Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation or negotiation.

2. If the dispute can not be settled within six months, it may, at the request of either Contracting Party, be submitted to an arbitral tribunal in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted on a case-by-case basis as follows:

Within two months of receiving the request for arbitration, each Contracting Party shall designate a member of the tribunal. These two members will then choose a third-country national who, with the approval of both Contracting Parties, will be appointed President of the tribunal (hereafter referred to as the President). The President shall be appointed within three months of the date of appointment of the other two members.

4. If, within the periods specified in paragraph 3 of this article, the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he is a national of one of the Contracting Parties or is otherwise prevented from doing so, the Vice-President shall be invited to make the appointments. If the Vice-President is also a national of one of the Contracting Parties or prevented from performing this function, the next International Judge-in-office member who is not a national of one of the Contracting Parties shall be invited to make the appointments.

5. The arbitral tribunal shall take its decisions by a majority of votes. These decisions will be binding. Each Contracting Party shall bear the costs of its own arbitrator and those of his representation in arbitration proceedings: the expenses of the President and other expenses shall be borne in equal parts by both Contracting Parties. The arbitral tribunal will determine its own procedure.

## **Article 10. Application of other Special Rules and Commitments**

1. When a matter is settled simultaneously by this Agreement and by another international agreement to which both Contracting Parties are parties, no provision of this Agreement shall prevent any Contracting Party or any of its investors who have investments in the other Party Contracting parties, benefit from any regulations that are more favorable to its case.

2. If treatment accorded by a Contracting Party to investors of the other Contracting Party in accordance with its legislation or other specific provisions or contracts is more favorable than that guaranteed by the Agreement, the most favorable treatment shall be accorded.

## **Article 11. Scope of the Agreement**

1. This agreement shall cover all investments made in accordance with the legislation of the States in whose territories they are made.

2. With respect to paragraph 1 of this Article, this Agreement shall apply to all investments made by investors of one of the Contracting Parties in the territory of the State of the other Contracting Party before and after the entry into force of this Agreement.

3. However, the Agreement shall not apply to disputes which arose before its entry into force.

4. The provisions of this Agreement may be amended or supplemented by mutual consent of the Contracting Parties after the entry into force of this Agreement.

## **Article 12. Entry Into Force, Duration and Expiry**

1. Each Contracting Party shall notify the other, through diplomatic channels, of the completion of the procedures required by its legislation for the entry into force of the Agreement. This agreement will enter into force 30 days after the date of the second notification.

2. This Agreement shall remain in force for a period of 10 years and shall continue to be in force if one year before the expiration of the initial period or any subsequent period, either Contracting Party notifies the other in writing of its intention To denounce the agreement.

3. In respect of investments made prior to the expiration of this Agreement, its provisions will continue to be valid for a period of 10 years from the expiry date.

In witness whereof the undersigned, duly authorized, have signed this Agreement.

Done in duplicate, in Bucharest, on 23 February 1995, in the following languages: Romanian, Ukrainian and English, all texts being equally authentic. In case of difference of interpretation, the English text will prevail.

For the Government of Romania, For the Government of Ukraine,

Dan Mogos, Anatoli A. Scerbatiuk,

Secretary of State in the Ministry of Finance Deputy Minister, Ministry

Foreign Economic Relations