

AGREEMENT BETWEEN THE GOVERNMENT OF ROMANIA AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA ON THE ENCOURAGEMENT AND RECIPROCAL INVESTMENT PROTECTION

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

Desiring to intensify economic cooperation in the mutual interest of both States.

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party.

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1) The term "investment" means the rights, property and assets of any kind constituted or established in the territory of a Contracting Party in accordance with its laws and regulations, including but not limited to:

- a) Ownership of movable and immovable property as well as any other rights in rem servitudes, such as mortgages, liens, pledges;
- b) The shares, and other forms of participation shares in companies formed in the territory of one of the contracting parties;
- c) The obligations and rights, claims to any performance having an economic value;
- d) Intellectual and industrial property rights, such as copyrights, patents, designs or models, industrial designs, trademarks, trade or service, technical processes, trade names, know-how, goodwill, names, goodwill and other similar rights recognized by the laws and regulations of the Contracting Party; and
- e) The concessions, including concessions to search for and extract exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their classification as investment within the meaning of the present agreement, provided that such a change does not contradict the laws and regulations.

Returns reinvested shall benefit from the provisions of this Agreement in the same manner as investment in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

2) The term "investor" means:

- a) Any natural person who is a national of a Contracting Party that is an investment in the territory of the other contracting party.

The term "national" means:

- As regards Romania, means any natural person of Romanian citizenship in accordance with its laws and regulations.
- In respect of the Republic of Tunisia, any natural person of Tunisian nationality in accordance with its laws and regulations:

b) Legal persons constituted in the territory of either Contracting Party, in accordance with the laws and regulations of the latter and making an investment in the territory of the other contracting party.

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

4) The term "territory" shall mean in respect of either Contracting Party the territory under its sovereignty, including the territorial sea, as well as those sub-marine areas and other maritime areas over which that Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1) Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party.

2. Investments will be admitted in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection and security provided for in this Agreement.

3) Subject to compliance with the laws and regulations in this area, each Contracting Party shall permit investors of the other contracting party to engage managerial and technical personnel, regardless of their choice of nationality.

Subject to the laws and regulations relating to the entry and sojourn of aliens, investors of one of the Contracting Parties will be authorities to enter and reside in the territory of the other Contracting Party, with a view to achieving and to manage their investment.

Article 3. Treatment of Investments

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 hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, growth, sale or liquidation of such investments.

2) Each Contracting Party shall in its territory, fair and equitable treatment to investments of 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 or by investors from any third State, whichever is the more favourable.

3) The provisions of this Agreement relating to most favoured nation treatment shall not be construed so as to oblige one contracting party to extend to investments of investors of the other Contracting Party the privileges arising from its membership to present or future any customs or economic union, a free trade area, common market or any other form of regional economic organization and of agreements for the avoidance of double taxation or any other arrangement relating to taxation.

Article 4. Expropriation and Compensation

1) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized, subject to any other similar measures (hereinafter referred to as "expropriation") except where the following conditions are met:

a) The measures are taken in the public interest and under due process of an appropriate;

b) The measures are not discriminatory;

c) The measures are accompanied by provisions for the payment of prompt, effective and adequate compensation.

2) The amount of compensation shall correspond to the real value of the investment concerned, the day before the date on which such measures are taken or publicly known.

At the request of the investor concerned, the legality of the expropriation, and the amount of compensation shall be subject to review by the competent authorities of the country in which the investment has been made.

3) The compensation shall be settled in any convertible currency. It shall be paid without delay and freely transferable.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments have suffered in the territory of the other Contracting Party, damage

or loss due to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any similar event, benefit from the other contracting party treatment not less than that accorded to its own investors or investors of the most favoured nation; the most favourable treatment to be used as regards restitution, indemnification, compensation or other remedies. The amounts that may result from the application of this article shall be freely transferable.

Article 6. Transfers

1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party, to those investors the free transfer of payments relating to their investments and in particular:

- a) Current investment interests including income, profits, dividends, royalties, capital;
- b) Loan repayments;
- c) Additional contributions of capital necessary for the maintenance or development of the investments;
- d) A proportion of earnings of nationals of the other Contracting Party who are authorised to work in connection with an investment approved in its territory;
- e) Compensation paid pursuant to articles 4 and 5;
- f) The proceeds of sale, the alienation or from the partial or total liquidation of an investment.

2) The transfers shall be effected without delay in any convertible currency at the rate of exchange and normal officially applicable on the date of transfer and after completion of the procedures in force.

3) The guarantees provided for by this article shall be at least equal to those accorded to investors in like circumstances of the most favoured nation.

Article 7. Subrogation

1) If one of the contracting parties or institutions designated by it to pay compensation to its own investors under a guarantee covering non-commercial risks, given to an investment made in the territory of the other contracting party, the latter Contracting Party shall recognize, by virtue of the principle of subrogation, the transfer of any compensation under the investors to the former Contracting Party or its designated agencies.

2) With regard to the rights transferred, the other Contracting Party may, in respect of the institution which is subrogated to the rights of the indemnified investors, claim against the institution which is subrogated to the rights of the indemnified investors, the obligations incumbent on the latter legally or contractually under the same conditions as the latter.

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

1) Any dispute with respect to investments between a Contracting Party and an investor of the other Contracting Party shall be settled amicably, as far as possible.

2) If a dispute cannot be settled in this way within six months from the date of notification, the investor may submit the dispute for resolution to his choice:

- a) Either to the competent court of the Contracting Party in whose territory the investment has been made;
- b) Either to the International Centre for Settlement of Investment Disputes (ICSID) established 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;
- c) Or to an ad hoc tribunal which, unless otherwise direct arrangement between the parties to the dispute shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Once the investor has submitted the dispute, soil for the courts of the Contracting Party concerned or to any ad hoc arbitration, the choice of one of these procedures provided for in paragraph 2 shall be final.

3) Each Contracting Party consents so that any dispute related to investments, to be submitted to international conciliation

or arbitration.

4) The Contracting Party which is a party to a dispute may, at any stage of the proceeding concerning the investment disputes, for his or her defence invoke its immunity or the fact that the investor has received pursuant to an insurance central compensation covering the whole or part of the incurred damage or loss.

Article 9. Settlement of Disputes between the Contracting Parties

1) Disputes between the contracting parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations between both Contracting Parties.

If such a dispute cannot be settled within a period of three months from the date of the start of negotiations, it shall be submitted at the request of either contracting party to an arbitral tribunal, in accordance with the provisions of this article.

2) The arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed offered by mutual agreement a Chairman who shall be a national of a third country and who shall be appointed by the two contracting parties. The arbitrators shall be appointed within three months and the Chairman within five months from the date of request for arbitration.

3) If the periods specified in paragraph (2) above 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 is a national of either Contracting Party or if he is unable to perform this function, the designations shall be made by the Vice-President of the International Court of Justice. If the Vice-President is a national of either Contracting Party or if he is unable to perform this function, the most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointments.

4) The arbitral tribunal shall take its decisions in accordance with the provisions of the present Agreement and other agreements concluded between the contracting parties, as well as the principles of international law. The decision shall be taken by a majority of votes. Such decision shall be final and binding on the contracting parties.

5) Each Contracting Party shall bear the costs of its appointed arbitrator. The cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

The arbitral tribunal shall determine its own rules of procedure.

Article 10. Implementation

This Agreement shall also apply to investments of investors of one Contracting Party in the territory of the other contracting party, in accordance with its laws and regulations, before its entry into force as from 1 January 1957. However, the Agreement shall not apply to disputes which occurred prior to its entry into force and shall continue to be governed by the Agreement of 11 December 1987.

From its entry into force, this agreement repeals and replaces the agreement between the Republic of Tunisia and Romania of 11 December 1987.

Article 11. Applicable Rules

1) Where a matter relating to investment is governed by this Agreement and simultaneously by the national laws and regulations of either Contracting Party or under existing international conventions or to be concluded by the parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

2) Investments covered by a special agreement between investors of one Contracting Party and the other Contracting Party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement, to the extent that it is more favourable provisions than those laid down in this Agreement.

Article 12. Entry Into Force and Termination

1) This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their instruments of ratification. It shall remain in force for a period of ten years.

2) Unless one of the Contracting Parties denounces it in writing at least one year before the expiration of the period of validity, the present Agreement shall be extended tacitly for consecutive periods of ten years. Each Contracting Party may

denounce it then with a written notice of at least one year.

3) In respect of investments made prior to the expiration of the validity of this Agreement, they will continue to benefit from the protection of its provisions for a further period of ten years.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Tunis on 16.10.95 in two originals, each in Romanian, Arabic and French languages, all texts being equally authentic.

For the Government of Romania

Teodor Viorel Melescanu,

Minister of State,

Minister of Foreign Affairs

For the Government of the Republic of Tunisia

Habib Ben Yahia,

Minister of Foreign Affairs