

No. 17185

**FRANCE
and
ROMANIA**

**Convention on the reciprocal encouragement, protection and
guarantee of investments. Signed at Paris on 16 Decem-
ber 1976**

Authentic texts: French and Romanian.

Registered by France on 17 November 1978.

**FRANCE
et
ROUMANIE**

**Convention sur l'encouragement, la protection et la garantie
réciproques des investissements. Signée à Paris le 16 dé-
cembre 1976**

Textes authentiques : français et roumain.

Enregistrée par la France le 17 novembre 1978.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE RECIPROCAL ENCOURAGEMENT, PROTECTION AND GUARANTEE OF INVESTMENTS

The Government of the French Republic and the Government of the Socialist Republic of Romania,

Desiring to develop relations of economic co-operation between the two States and to create favourable conditions for French investments in Romania and Romanian investments in France,

Considering that the granting of guarantees for investments is likely to favour the development of initiatives in this area,

Having regard to the Final Act of the Conference on Security and Co-operation in Europe,

Have agreed as follows:

Article 1. Each Contracting Party shall encourage the investments made in its territory by investors of the other Party.

Article 2. For the purposes of this Convention:

1. The term "investments" means any interest in or contribution to any enterprise or economic activity, including all the property and financial assets of the participants in the investment and, particularly but not exclusively:

- (a) Shares and other forms of direct or indirect participation, albeit minority, in companies organized in the territory of either Contracting Party;
- (b) Movable and immovable property and all other real rights or personal guaranties such as mortgages, liens, usufructs, sureties and similar rights;
- (c) Reinvested profits, claims or any rights pertaining to benefits having an economic or financial value;
- (d) Industrial property rights, technical processes, copyright, registered trade names and other commercial and intangible rights;
- (e) Industrial concessions accorded by law or by virtue of a contract, including concessions for prospecting, mining or developing natural resources, including maritime regions under the jurisdiction of one of the Contracting Parties.

It is understood that the said interests or contributions of any kind shall be invested in accordance with the legislation of the Contracting Party in whose territory the investment is made.

Any change in the form of the investments shall not affect their status as investments, provided that such change is not contrary either to the legislation

¹ Came into force on 1 August 1978, first day of the second month following the date of the exchange of notifications confirming its approval, in accordance with article 13.

of the State in whose territory the investment is made or to the approval granted for the original investment.

2. The term “investors” means:

- (a) In the case of the Socialist Republic of Romania, Romanian economic units having legal personality, such as industrial plants or equivalent units and economic units which, under the law, have competence in matters relating to foreign trade and economic co-operation with other countries;
- (b) In the case of the French Republic, individuals who have French nationality under French law and bodies corporate constituted in France in accordance with French law and having their registered office there.

3. For the purposes of this Convention:

(a) The term “direct interests” means interests held by an investor of either Contracting Party in a company or economic activity situated in the territory of the other Contracting Party;

(b) The term “indirect interests” means interests held by a company having its registered office in the territory of one Contracting Party in another company or economic activity situated in this same territory, where the first-mentioned company is constituted with equity participation of an investor of the other Contracting Party.

Article 3. Each Contracting Party shall undertake to accord in its territory just and equitable treatment to the investments of investors of the other Party. Such treatment shall be at least the same as that accorded by each Contracting Party to investors of the most-favoured nation.

Article 4. Investments which have been the subject of a specific undertaking by one Contracting Party *vis-à-vis* investors of the other Party shall be governed by the terms of that undertaking, in so far as its provisions are more favourable than those laid down in this Convention.

Article 5. Investors of one of the Contracting Parties shall be accorded most-favoured-nation treatment in respect of their investments in the territory of the other Party and of the conduct of professional and economic activities connected with such investments.

However, most-favoured-nation treatment shall not include privileges granted by either Contracting Party to investors of third States, by virtue of their participation in or association with economic and customs unions, common markets, free-trade areas or regional economic organizations.

Article 6. 1. Investments made by investors of one Contracting Party in the territory of the other Party may not be expropriated, nationalized or subjected to any other measures having the same effect or the same character, except in the public interest and in a manner that is not discriminatory in relation to the investments of any third country, and in accordance with legal procedure and against payment of just compensation.

2. The amount of such compensation shall correspond to the real value of the property, rights and interests subjected to any measure of the kind mentioned in the foregoing paragraph, on the date in which the measure was taken.

3. At the date of this measure at the latest, suitable arrangements shall be made to determine the amount and the payment of the compensation, which shall be effectively realized, paid without delay and freely transferable.

Article 7. A Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall accord to such investors, with respect to their investments, the free transfer of:

- (a) Profits, dividends and other income derived from the investments;
- (b) Royalties from the intangible property referred to in article 2;
- (c) Payments made to repay loans obtained for the purpose of making investments and paying the interest thereon;
- (d) Proceeds of the transfer or complete or partial liquidation of the investments, including appreciation or increases in the invested capital;
- (e) Compensation deriving from the measures provided for in article 6.

The transfer of the aforesaid sums shall be carried out in accordance with the appropriate procedures, applied equitably, in good faith and on a non-discriminatory basis, after payment of any taxes and charges payable by the investor in the State in which the investment is made, without prejudice to the application of the tax agreements in force between the two States.

Nationals of either Contracting Party who have been authorized to work in the territory of the other Contracting Party for the purpose of engaging in economic and professional activities connected with the investments referred to in this Convention shall also be authorized to transfer to their country of origin an appropriate amount of their remuneration, in accordance with the legislation of each of the Contracting Parties.

The transfers referred to in the foregoing paragraphs shall be effected without delay, in the convertible currency in which the investment was made or in another convertible currency, if so agreed between the investor and the competent authorities, at the official rate of exchange applicable on the date of transfer.

Article 8. 1. In the event of a dispute between an investor of one Contracting Party and the other Contracting Party concerning the amount of the compensation requested, after the remedies available under the legislation of the Contracting Party in whose territory the investment was made have been exhausted, the Contracting Parties shall recognize the right of each Party to the dispute to institute before the International Centre for Settlement of Investment Disputes (ICSID), in accordance with the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington on 18 March 1965,¹ the proceedings provided for in that Convention, with a view to settling the dispute by arbitration.

2. However, the condition mentioned in paragraph 1 of this article, concerning exhaustion of the remedies available under the legislation of the Contracting Party in whose territory the investment was made, may no longer be invoked by that Party against the investor of the other Party after a period of two years has elapsed from the date of the institution of adversary proceedings with a view to the settlement of the dispute by the courts.

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

3. Each Contracting Party undertakes to implement the decision rendered by the International Centre for Settlement of Investment Disputes.

Article 9. In so far as its legislation so provides, each Contracting Party may, on the basis of a case-by-case review, grant a guarantee in respect of investments made by investors of that Party in the territory of the other Party, if such investments have been given prior approval by the latter Party.

Article 10. When one Contracting Party, by virtue of a guarantee issued, in accordance with the provisions of article 9 above, in respect of an investment made in the territory of the other Party, makes payments to its own investors, it shall thereby enter into the rights and shares of such investors deriving from the documents concerning the making of the investment.

The subrogation of rights shall also extend to the right of transfer referred to in article 7 above. The Contracting Party which has made payments to its own investors may not claim more extensive rights than those of the investor covered and shall have such rights after payment of taxes and charges and compliance with other obligations provided for in the documents concerning the making of the investment.

However, in the case of the investments referred to in article 9 above, if a claim has been submitted to the International Centre for Settlement of Investment Disputes, the subrogation to its own investors of the Contracting Party which has made payments to them shall apply only to rights granted to them by decision of the Centre.

Article 11. Investments made by investors of one Contracting Party in the territory of the other Party and existing at the time of the entry into force of this Convention shall also be subject to the provisions of this Convention.

Article 12. Any dispute concerning the interpretation or application of this Convention which cannot be settled within a period of six months through the diplomatic channel may be submitted, at the request of either Contracting Party, to an arbitral tribunal to be formed in the following manner:

Each Contracting Party shall designate an arbitrator within two months of the date on which the request for arbitration is received. The two arbitrators so designated shall, within four months of the notification by the Party which was the later in designating its arbitrator, choose a third arbitrator, who shall be a national of a third State.

Should one of the Contracting Parties not have designated an arbitrator within the time laid down, the other Party may request the Secretary-General of the United Nations to make the designation. The same shall apply, at the request of either Party, if the two arbitrators fail to agree on the choice of a third arbitrator.

The Contracting Parties may agree beforehand to designate, for a period of five years, subject to extension for further similar periods, a person to serve as the third arbitrator in the event of a dispute.

The deliberations of the arbitral tribunal shall be conducted in accordance with the provisions of this Convention and the other agreements concluded between the Contracting Parties and also in accordance with the general principles of international law. It shall take its decisions by a majority of votes. Such decisions

shall be final and binding; the Contracting Parties shall ensure that they are enforced.

The arbitral tribunal shall establish its own rules of procedure.

Each Contracting Party shall defray the expenses incurred by the arbitrator designated by it or designated in accordance with the provisions of the third paragraph above. Expenses connected with the chairman and other expenses shall be shared equally by the two Contracting Parties.

Article 13. This Convention shall be approved or ratified in accordance with the constitutional provisions in force in each State.

It shall enter into force on the first day of the second month following the date of exchange of the notifications stating that these provisions have been complied with.

It is concluded for an initial period of 10 years and shall remain in force thereafter unless one year's notice of termination is given through the diplomatic channel by either Contracting Party.

In the event of termination, this Convention shall continue to be applicable to investments made while it was in force for a period of 15 years.

DONE at Paris, on 16 December 1976, in two originals in the French and Romanian languages, both texts being equally authentic.

For the Government
of the French Republic:

[Signed]

RAYMOND BARRE

For the Government of the Socialist
Republic of Romania:

[Signed]

MANEA MANESCU
