

INVESTMENT GRANTING TREATIES

By conclusion of such conventions the creation and maintaining of favorable conditions for the increasing of investments for the investors of a contracting party on the territory of the other contracting party is aimed at, admitting that the promotion and mutual protection of such investments on the basis of the agreement are going to lead to the stimulation of the initiative in business and shall increase the economic prosperity of both states.

Most of the conventions concluded for this purpose follow the same pattern and many of their provisions are similar or even identical.

1. Definition of certain concepts

Investment means, for the meaning of the agreements concluded, any invested asset for the purpose of economic advantage or in another business purpose by an investor of one of the contracting party on the territory of the other contracting party, according to the law and legal regulations and shall comprise especially, but not exclusively:

- a) property rights on movables and immovable properties, as well as any other securities like: mortgages, guarantees or pledges and other similar rights;
- b) shares or any other form of participation in trade companies;
- c) rights of debt or any other rights regarding performances having an economic value;
- d) intellectual property rights like: copyright, patents, industrial designs, technical methods as well as trademarks, goodwill and know-how;
- e) concessions of business granted by law or according to a contract, including concessions regarding prospecting, cultivation, extraction or exploitation of natural resources.

Investor is any natural or legal person of a contracting party investing on the territory of the other contracting party.

Regarding Romania:

- the concept of natural person shall mean any natural person citizen of Romania, in accordance with its laws;
- the concept of legal person shall mean any entity like: a trade company, organization or association registered or established in

accordance with the legislation in force in Romania, having its office on the Romanian territory.

Regarding the other country to which the agreement is concluded, what natural person or legal person means shall be designated according to the legislation of the respective country.

2. Provisions of the conventions for promotion and mutual protection of investments

Any agreement concluded for promotion and mutual protection of investments comprises provisions regarding the obligation of each contracting party to encourage and create favorable conditions for the other contracting party's investors in order to invest capital on its territory and, according to laws and its legal regulations to admit such investments.

The investments of each contracting party's investors shall be always granted with a fair and equitable treatment and they shall enjoy the entire protection and security on the territory of the other contracting party.

2.1 Provisions regarding nationalization and expropriation

Conventions comprise provisions regarding nationalization and expropriation. The fact is expressly stipulated in conventions that investments made in Romania cannot be nationalized, expropriated or subjected to certain measures with equivalent effect unless conditions like:

- the measure is necessary for a public utility cause;
- the measure is not discriminatory;
- the measure is taken according to the applicable legal provisions;
- a previous, adequate and effective compensation shall be paid to investor,

are fulfilled.

Regarding the compensation, it shall be equivalent to the value of the market of investments affected immediately after the expropriation or before the imminent expropriation to be known to the public, regardless of the situation appearing firstly.

The compensation shall include the interest at a normal commercial rate until the date of the payment and shall be paid and transferred immediately in the country designated by the respective applicants and in the currency of the country to which the natural person or legal person belongs to or in any other free convertible currency accepted by the applicants.

2.2 Provisions regarding the repatriation of investments

The free transfer of payments related to their investments is guaranteed for the investors. These transfers shall comprise especially, but not exclusively:

- capital and additional funds necessary for maintaining and development of investment;
- incomes resulted from investment;
- funds for the reimbursement of loans related to an investment;
- amounts resulted from the total or partial selling or from the liquidation of an investment;
- compensation for nationalization and expropriation, compensation for losses;
- amounts coming from the regulation of a difference regarding investments;
- gains or other types of remuneration of foreign citizens employed in relation to investment

Transfers shall be performed with no restriction and without unjustified delay, in a free convertible currency, at the rate exchange of the main market for current transactions, applicable on the date of the transfer. The transfers shall be considered made without unjustified delay if made in a period normally necessary for the performing of transfers.

2.3 Provisions regarding the settlement of differences between one contracting party and an investor of the other contracting party

In case of any dispute appearing between one contracting party and an investor of the other contracting party in relation to an investment on the territory of that other contracting party, it shall be settled amicably, through negotiations.

If such dispute cannot be thus regulated within 6 months from the date of the application for settlement, the respective investor may subject the dispute to:

- law court or competent administrative tribunal or the contracting party on the territory of which the investment was made; or
- an arbitral tribunal established ad-hoc on the basis of the Arbitration Regulation of the United Nations Commission for International Trade Law (UNCITRAL);

or

- to the International Center for Disputes Settlement in relation to Investments (hereinafter referred to as “Centre”) for conciliation and arbitration, established according to the Convention for disputes settlement in relation to investments between states and other states’ persons, opened for signing at Washington D.C. on the 18th of March 1965 (hereinafter referred to as convention), if both contracting parties shall have become members to convention.

Arbitral judgment

The arbitral judgment shall base upon:

- provisions of the concluded contract;
- laws of the contracting party on the territory of which the investment was made, including rules regarding the conflict of laws and the rules and universally-accepted principles of international law.

The arbitral judgment shall be final and binding for both parties of the dispute and shall be executed according to the law of the respective contracting party.

2.4 Provisions regarding the settlement of disputes between contracting parties

The disputes between the contracting parties regarding the interpretation and enforcement of the provisions of the agreement shall be settles, as much as possible, by consultations and negotiations on diplomatic ways.

If within 6 months from the opening of the dispute between them, the contracting parties fail to reach an agreement, upon request of any of the contracting parties the dispute shall be subject to an **arbitral tribunal**.

Forming of the arbitral tribunal

The arbitral tribunal shall be formed from 3 members.

The arbitral tribunal shall be formed as follows: within 2 months from the date of the reception of the application for arbitration, each contracting party shall appoint an arbitrator, and these two arbitrators shall appoint a president who will be a resident of a third party state having diplomatic relations with both contracting parties.

If one of the contracting parties has not appoint an arbitrator and has not responded to the other contracting party’s invitation to perform such appointment within two months, the arbitrator shall be appointed, upon

request of that contracting party, by the president of the International Court of Justice.

Procedure for settling the litigation by the arbitral tribunal

Subject to other orders given by the contracting parties, the tribunal shall establish its own procedure.

Decisions of the arbitral tribunal

The decisions of the tribunal are passed with a majority of votes.

The decisions of the tribunal are final and binding for each contracting party.

Bearing of expenses in case of litigation settlement

Each contracting party shall bear the expenses of its own member of the tribunal and of its representation in the arbitral procedures; the president's expenses and the other expenses shall be borne by the contracting parties in the same measure. The tribunal may still decide for a higher proportion of expenses to be borne by one of the contracting parties, and this decision shall be binding for both contracting parties.