Agreement between the Government of the Kingdom of Sweden and the Government of Romania on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and the *Government of Romania*, hereinafter referred to as "the Contracting Parties",

desiring to intensify economic cooperation to the mutual benefit of both States and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

recognizing that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

1. "investment" shall mean any kind of asset owned or controlled invested directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

a) movable and immovable property as well as any other rights in rem, such as mortgage, lien, pledge, usufruct and similar rights;
b) shares, debentures and other forms of participation in companies;
c) claims to money and other rights relating to any performance having an economic value;
d) intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;
e) business concessions conferred by law, administrative decisions or under contract, including concessions to search for, cultivate, extract or exploit natural resources; and
f) goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party.

A change in the form in which assets are invested does not affect their character as investments.

2. "investor" shall mean:

a) any natural person who is a citizen of a Contracting Party in accordance with its laws;
b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of a Contracting Party and which have their seat in the territory of that same Contracting Party; and
c) legal entities wherever located which are effectively controlled by citizens of a Contracting Party or by legal entities having their seat in the territory of that Contracting Party.

3. "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profits, dividends, interest, capital gains, royalties, or fees.

4. "territory" shall mean:

I in respect of Romania, the territory of Romania, including its territorial sea and the airspace above its territory and its territorial sea over which Romania exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zones over which Romania exercises its jurisdiction, respectively sovereign rights, in accordance with its legislation and international law;

Jurisdiction

- **Romania**
- **Sweden**

Legis in effect

- 1 April 2003

Legislation date

- 29 May 2002

Topics

- Investment Arbitration

Source

- **Agreement between the Government of the Kingdom of Sweden and the Government of Romania on the Promotion and Reciprocal Protection of Investments**, Supplied by the Research Staff at the Penn State Institute of Arbitration,

- in respect of the Kingdom of Sweden, the territory of the Kingdom of Sweden as well as the exclusive economic zone, the seabed and subsoil, over which it exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contacting Party.

3. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof, as well as the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

4. The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken shall enjoy the full protection of this Agreement and in no case shall a Contracting Party award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with an investor of the other Contracting Party with regard to his or her investment.

5. Reinvested returns yielded from an investment shall be given the same treatment and protection as an investment.

Article 3

National and Most Favoured Nation Treatment of Investments

1. Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is more favourable to the investor.

2. The provisions of this Agreement relating to the granting of the most-favoured-nation treatment, shall not be construed as to oblige one Contracting Party to extend to the investors and investments of the other Contracting Party the advantages resulting from any existing or future customs or economic union, free-trade area or other similar international agreement to which either of the Contracting Parties is or may become a Party.

3. The provisions of Paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly 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, nationalized or subjected, directly or indirectly, to other measures having similar effect (hereinafter referred to as expropriation) unless the following conditions are fulfilled;

a) the measures are taken in the public interest and under due process of law;
b) the measures are not discriminatory; and
c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

2. Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the “Valuation Date”).

Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

3. The provisions of Paragraph (1) and (2) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

4. Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

Article 5

Transfers

1. Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, such as:

a) the returns;
b) the proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;
c) funds in repayment of loans; and
d) the earnings of individuals, not being its citizens, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

2. Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

Article 6

Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such right.

Article 7

Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If any such dispute cannot be settled within three months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to either:

i) the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, (the Washington Convention); or
ii) an ad hoc tribunal set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID.

If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

3. For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, is controlled by an investor of the other Contracting Party, shall be treated as a legal person of the other Contracting Party.

4. Any arbitration shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

5. The consent given by each Contracting Party in paragraph 2 of this Article and the submission of the dispute by an investor to arbitration shall constitute the written consent and written agreement to arbitration for the purposes of the Washington and New York Convention and UNCITRAL.

6. Nothing in this Article shall prevent an investor of one Contracting Party from referring a dispute concerning an investment to the competent court of the other Contracting Party in the territory of which the investment has been made.

7. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

Article 8

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 by negotiations between the two Contracting Parties.

2. If the dispute cannot thus be settled within six months following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. The two members shall nominate, by mutual agreement, as Chairman of the respective arbitration tribunal, a citizen of a third State who will be appointed by the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

4. If the time limits referred to in Paragraph 3 of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

5. If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph 4 of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party, shall be invited to make the necessary appointments.

6. The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9

Application of the Agreement

1. This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

2. This Agreement shall in no way restrict the rights and benefits

which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10

Entry into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of twenty years from that date.

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

Done at Stockholm on 29 May 2002 in duplicate in the Swedish, Romanian and English languages, the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.