AGREEMENT

BETWEEN

THE GOVERNMENT OF ROMANIA

AND

THE GOVERNMENT OF THE

FEDERAL REPUBLIC OF NIGERIA

ON THE RECIPROCAL PROMOTION AND PROTECTION

OF INVESTMENTS

PREAMBLE

The Government of Romania and the Government of the Federal Republic of Nigeria hereinafter referred to as "the Contracting Parties".

desiring to intensify economic co-operation for the mutual benefit of both States,

intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the State territory of the other Contracting Party,

recognising the need to promote and protect foreign investments with the aim of fostering the economic prosperity of both States,

have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

(1) the term "investor" refers with regard to either Contracting Party to:

a) natural persons having investments who, according to the State law of that Contracting Party, are considered to be its citizens;

b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the State law of that Contracting Party and have their seat, together with real economic activities in the State territory of that same Contracting Party.

(2) the term "investment" shall include every kind of assets invested by investors of one Contracting Party in the State territory of the other Contracting Party, in accordance with the national laws and regulations of the latter, and include particularly, but not exclusively:

a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

b) shares, parts or any other kind of participation in companies established in the State territory of either Contracting Party;

c) claims to money or to any rights to any performance having an economic value;

d) intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, know-how and goodwill, as well as other similar rights recognised by the State laws of the Contracting Parties;

e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law;

f) reinvested returns.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

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

(4) the term "territory" means the State territory of each Contracting Party, including the territorial sea and the economic exclusive zone over which the State concerned exercises, in accordance with internal and international law, sovereignty, sovereign rights or jurisdiction.

ARTICLE 2

PROMOTION AND ADMISSION

(1) Each Contracting Party shall, in its State territory, promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its national laws and regulations.

(2) When a Contracting Party shall have admitted an investment in its State territory, it shall, in accordance with its national laws and regulations, grant the necessary permits in connection with such an investment, including authorisations for engaging top managerial and technical personnel of their choice, regardless of citizenship.

ARTICLE 3

PROTECTION AND TREATMENT

(1) Each Contracting Party shall protect within its State territory investments made in accordance with its national laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments. In particular, each Contracting Party or its competent authorities shall issue the necessary authorisations mentioned in Article 2, paragraph (2), of this Agreement.

(2) Each Contracting Party shall ensure fair and equitable treatment within its State territory of the investments of the 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 State territory by its own investors, or than that granted by each Contracting Party to the investments made within its State territory by investors of any third State.

(3) The most favoured nation clause shall not be construed so as to oblige a 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 or a free trade area, to which either of the Contracting Parties is or becomes a member ; nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

(4) If the State legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall, to the extent that it is more favourable, prevail over this Agreement;

(5) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its State territory by investors of the other Contracting Party.

ARTICLE 4

TRANSFERS

(1) Each Contracting Party in whose State territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly of:

a) returns according to Article 1, paragraph (3) of this Agreement;

b) amounts relating to loans incurred, or other contractual obligations undertaken, for the investments;

c) proceeds accruing from the total or partial sale or liquidation of an investment;

d) the approved portion of earnings of expatriates who are allowed to work in an investment made in the State territory of the other Contracting Party.

(2) Notwithstanding the provisions of paragraph (1) of this Article, either Contracting Party may, in exceptional financial or economic circumstances, impose such exchange restrictions in accordance with its national laws and regulations.

(3) Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force in the State territory of the Contracting Party in which the investment was made.

ARTICLE 5

COMPENSATION FOR EXPROPRIATION AND LOSSES

(1) None of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measures having the same nature or effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest as established by law, on a non discriminatory basis, and under due process of law, and provided that provisions are made for effective and adequate compensation. The amount of compensation, interest included, shall be settled and paid without delay to the investor entitled thereto. Resulting payments shall be freely and promptly transferable in convertible currency. Such compensation shall amount to the market value of the investment expropriated, immediately before the expropriation became public knowledge.

(2) Investors of either Contracting Party whose investments suffer losses in the State territory of the other Contracting Party owing to war or other armed conflict, state of emergency, revolt or riot, shall be accorded treatment no less favourable than that accorded to its own investors or that of any third State as regards compensation. Such payments shall be freely transferable.

ARTICLE 6

APPLICABILITY

This Agreement shall also apply to investments in the State territory of a Contracting Party made in accordance with its national laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

ARTICLE 7

SUBROGATION

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the State territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency, by law or by legal transaction, of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the party indemnified.

(2) The Contracting Party with the subrogated rights or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by that Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to it for the purpose of meeting any expenditure incurred in the State territory of the host Contracting Party.

ARTICLE 8

SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.

(2) If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement either to:

a) the competent court of the Contracting Party in the State territory of which the investment has been made; or

b) the International Centre for Settlement of Investment Disputes (ICSID) provided for 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; or

c) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

(4) The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

ARTICLE 9

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through official channels.

(2) If the Contracting Parties cannot reach an agreement within twelve months, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a Chairman who shall be a citizen of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is a citizen of either Contracting Party or is otherwise prevented from carrying out the said function, the appointment shall be made by the Vice-President. If the Vice-President is a citizen of either Contracting Party or is otherwise prevented from discharging the said function, the appointment shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.

(6) The tribunal shall determine its procedure.

(7) Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(8) The decisions of the tribunal are final and binding on the Contracting Parties.

ARTICLE 10

AMENDMENT

Any amendment to or revision of this Agreement shall be in writing and shall come into effect following the consent of both Contracting Parties, and after thirty days of the completion of Exchange of Notes through official channels to that effect.

ARTICLE 11

DURATION AND TERMINATION

(1) This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that the required legal procedures in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

This Agreement shall automatically remain in force thereafter, unless either Contracting Party shall have given written notice of termination to the other. In such case the Agreement will be terminated twelve months from the date on which the written notice was given.

(2) In respect of investments made before the date of the termination of this Agreement, the foregoing articles shall continue to be effective for a further period of ten years from that date.

IN WITNESS THEREOF the Undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Bucharest, on 18 decembre 1998, in two originals,each in the Romanian and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF ROMANIA

Bujor Bogdan Teodoriu
Secretary of State
Ministry of Finance

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

Nike Akande
Federal Minister
of Industries