

Romania

EMERGENCY ORDINANCE no. 92 of 30 December 1997 on stimulating direct investment (1997)

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EMERGENCY ORDINANCE no. 92 of 30 December 1997 on stimulating direct investment

Published in the OFFICIAL GAZETTE no. 386 of December 30, 1997

Pursuant to art. 114 para. (4) of the Romanian Constitution, The Government of Romania issues the following emergency ordinance:

Chapter I General provisions

Article 1

This Emergency Ordinance establishes the general framework regarding the guarantees and facilities available to direct investments in Romania.

Article 2

For the purposes of this Emergency Ordinance, the terms below are defined as follows:

a) direct investment – participation in the establishment or expansion of a company in any of the legal forms provided by law, the acquisition of shares or shares of a company, except for portfolio investments, or the establishment and expansion in Romania of a branch by a foreign company, by:

- financial contribution, in national currency or in convertible currency;
- contribution in kind of immovable property or/and movable, tangible and intangible property;
- participation in the growth of an enterprise's assets, through any legal mode of financing;

b) portfolio investment – the acquisition of securities on organized and regulated capital markets that do not allow direct participation in the management of the company;

c) investor – the natural or legal person, resident or non-resident, domiciled or permanently established in Romania or abroad, who invests in Romania, in any of the ways provided in letters a) and b);

d) resident/non-resident – persons qualified as such according to the regulations in force regarding the foreign exchange regime;

e) reinvested profit - the amounts used from the profit made for the modernization of technologies and the expansion of the company's activity, materialized in depreciable tangible and intangible assets, as well as for acquisitions of assets, shares or shares through the offer of the State Property Fund.

Article 3

The regime of portfolio investments, including the advantages they enjoy, is established by special law.

Chapter II Common guarantees and facilities

Article 4

(1) Investments made in Romania, as well as the possession, use and disposal of a property benefit from the guarantees and facilities provided by this Emergency Ordinance.

(2) Investors in Romania mainly benefit from the following guarantees and facilities:

a) the possibility of making investments in any field and in any legal forms provided by law;

- b) equal treatment - fair, equitable and non-discriminatory - for Romanian or foreign investors, residents or non-residents in Romania;
 - c) safeguards against nationalisation, expropriation or other measures having equivalent effect;
 - d) customs and tax facilities;
 - e) assistance in completing administrative formalities;
 - f) the right to convert into investment currency the amounts in lei due to them from the investment, as well as to transfer the currency to the country of origin, according to the regulations on the foreign exchange regime;
 - g) the right of investors to choose the competent courts or arbitral tribunals for the settlement of any disputes;
 - h) the possibility of carrying forward losses incurred during a financial year on account of the taxable profit of the following financial years;
 - i) the possibility of using accelerated depreciation;
 - j) the possibility of deducting advertising and advertising expenses from the taxable profit;
 - k) the possibility of employing foreign citizens, in accordance with the legal provisions in force.
- (3) The legal regime provided for in para. (1) and (2) shall not apply to investors operating and investments operating in free zones or in areas regulated by special laws.

Article 5

The areas in which investments can be made only on the basis of a license or authorization, as well as the general conditions under which licenses or authorizations can be granted, are established by normative acts with the force of law.

Article 6

A commercial company, resident or non-resident legal person, may acquire any rights in rem over immovable property, to the extent necessary for the performance of its activity, according to the corporate purpose, in compliance with the legal provisions regarding the acquisition of the right of private property over land by foreign citizens and stateless persons, as well as by foreign legal persons.

Article 7

Investors may exchange currency on the territory of Romania, under the conditions established by the regulations of the National Bank of Romania, published in the Official Gazette of Romania, Part I.

Article 8

(1) Investments may not be nationalised, expropriated or subject to measures having equivalent effect, except in cases where such a measure cumulatively meets the following conditions:

- a) are necessary for the cause of public utility;
- b) are non-discriminatory;

- c) it is carried out in accordance with the express provisions of the law;
- d) shall be made with the payment of prior, adequate and effective compensation.

(2) The compensation provided for in para. (1) letter d) shall be equivalent to the fair market value of the expropriated investment at the time immediately prior to the expropriation or before the imminent expropriation becomes known in a way that affects the value of the investment.

(3) At the request of the investor, the fair market value of the investment may be expressed in freely convertible foreign currency, based on the exchange rate of that currency in the foreign exchange market at the valuation date.

(4) The affected investor has the right to a prompt examination of his case, the evaluation of his investment and the payment of compensation, according to Romanian law, an examination carried out, as the case may be, by a judicial authority or by another independent authority and competence, according to the relevant international treaties to which Romania is a party.

Chapter III Guarantees and facilities for foreign or non-resident investors in Romania

Article 9

Investors shall have the same rights and obligations, regardless of whether they are residents or non-residents, Romanian or foreign, subject to the provisions of this chapter.

Article 9¹

If a bilateral agreement for the promotion and mutual protection of investments, ratified in accordance with the law, or another law would entitle an investor, a foreign natural or legal person, to a more favorable treatment than that provided for by this Emergency Ordinance, the investor in question will benefit from that treatment.

Article 10

Non-resident investors in Romania have the right to transfer abroad, without any restrictions, after paying taxes and legal fees, the following income, in freely convertible currency:

- a) the dividend or profit obtained from a commercial company, the Romanian legal person, if they are shareholders or associates;
- b) income obtained in the case of a joint venture, as well as income obtained from the sale of shares or shares;
- c) amounts obtained from the liquidation of a commercial company, according to Law no. 31/1990 on commercial companies, as subsequently amended and supplemented, or from the liquidation of a commercial company according to the bankruptcy procedure, regulated by Law no. 64/1995 on the procedure of judicial reorganization and bankruptcy, as subsequently amended;
- d) amounts obtained by way of compensation as a result of an expropriation or the application of another measure having equivalent effect;
- e) other income, according to the form of realization of the investment.

Article 11

Disputes between foreign investors and the Romanian state regarding the rights and obligations resulting from the provisions of chap. II and III, as well as of chap. V will be resolved, at the option of the investor, according to the procedure established by:

a) Law No 29/1990 on Administrative Disputes and Law No 105/1992 on the Regulation of Private International Law Relations;

b) The Convention for the Regulation of Investment Disputes between States and Persons of Other States, concluded in Washington on March 18, 1965 and ratified by Romania by the Decree of the Council of State no. 62/1975, published in the Official Gazette, Part I, no. 56 of 7 June 1975, when the foreign investor is a citizen of a State party to the Convention and the dispute is resolved by conciliation and/or arbitration. In such situations, a Romanian company in which foreign investors hold - according to Romanian law - a controlling position, this will be considered, according to art. 25 para. (2) letter b) of the Convention, as having the nationality of foreign investors;

c) UNCITRAL/UNCITRAL Arbitration Rules; if arbitrators are not appointed under these rules, they shall be appointed by the Secretary-General of the International Centre for Settlement of Investment Disputes.

Chapter IV Customs and tax facilities

Article 12

Repealed (on 16-12-1998, Art. 12 was repealed by LAW no. 241 of 14 December 1998 published in the OFFICIAL GAZETTE no. 483 of 16 December 1998.)

Article 13

Investors benefit from the following facilities:

a) Repealed;

b) Repealed;

c) Repealed;

d) Repealed;

e) Repealed;

f) Repealed.

Article 13¹

Repealed

Chapter V Final and transitional provisions

Article 14

In case of non-compliance with the conditions for granting the facilities provided for in art. 13, the specific sanctions, existing in the customs and tax legislation in force at the time of the violation of the norm, will be applied.

Article 15

Repealed (on 01-01-2000, Art. 15 was repealed by art. 5 of the EMERGENCY ORDINANCE no. 217 of 29 December 1999 published in the OFFICIAL GAZETTE no. 650 of 30 December 1999)

Article 15¹

Repealed

Article 16

The facilities granted by this emergency ordinance will not be modified for 5 years.

Article 17

Within 30 days from the date of entry into force of this Emergency Ordinance, the Reform Council and the Ministry of Finance shall develop and submit to the Government for approval methodological norms for its application.

Article 18

On the date of entry into force of this Emergency Ordinance, the Government Emergency Ordinance no. 31/1997 on the regime of foreign investments in Romania, published in the Official Gazette of Romania, Part I, no. 125 of 19 June 1997, art. 2 para. (4) of the Government Ordinance no. 70/1994 on corporate income tax, republished in the Official Gazette of Romania, Part I, no. 40 of 12 March 1997, as subsequently amended and supplemented, as well as any other provisions contrary to this Emergency Ordinance.

PRIME MINISTER VICTOR CIORBEA

Countersigns: The Minister of Reform, President of the Council for the Reformation, Ilie Șerbănescu Minister of Finance, Daniel Dăianu Minister of State, Minister of Industry and trade, Mircea Ciumara p. Minister of State, Minister of Justice, Dinu Ianculescu, Secretary of State

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