

jet de décision comprenant les conditions de réalisation de l'investissement et les facilités qui seront accordées à ce dernier.

**Art. 7.** — (1) Les investissements réalisés sous le coup de l'Ordonnance d'urgence du Gouvernement n° 92 de 1997 sur la stimulation des investissements directs, approuvée et modifiée par la Loi n° 241 de 1998, peuvent bénéficier des facilités prévues à l'art. 3 de la présente ordonnance d'urgence, s'ils majorent le capital social à 50 millions dollars EU au cours d'une période maximum d'un an à compter de la date d'entrée en vigueur de la présente ordonnance d'urgence ou s'ils remplissent un des critères d'octroi des facilités à la date en question.

(2) Les investissements réalisés en vertu de la Loi n° 35 de 1991, de la Loi n° 71 de 1994 et de l'Ordonnance d'urgence du Gouvernement n° 31 de 1997 peuvent bénéficier des dispositions de la présente ordonnance d'urgence dans la mesure où ils remplissent un des critères d'éligibilité prévus à l'art. 2, au cours d'une période maximum d'un an à compter de son entrée en vigueur, ou remplissent un des critères d'octroi des facilités à la date respective et n'ont déjà bénéficié des facilités respectives.

**Art. 8.** — (1) Au cas où la société commerciale dans laquelle ont été effectués des investissements directs à impact majeur sur l'activité économique est liquidée dans une période inférieure au double de celle pour laquelle elle jouit de l'une des facilités prévues par la présente ordonnance d'urgence, elle est obligée de payer les impôts et taxes établis, conformément à la loi, pour toute la période de son fonctionnement, auxquels s'ajoutent les intérêts et majorations de retard prévus par la loi.

(2) Les impôts et taxes dus à l'Etat conformément à l'al. (1) sont payés en priorité des résultats de la liquidation des investissements ou des autres droits dus aux actionnaires.

**Art. 9.** — A la date de l'entrée en vigueur de la présente Ordonnance d'urgence sont abrogés les points 13.1 lett. c), 13.2, 15, 23 et 32 des Normes méthodologiques pour l'application de l'Ordonnance d'urgence du Gouvernement n° 31 de 1997 sur le régime des investissements étrangers en Roumanie, approuvée par l'Arrêté du Gouvernement n° 928 de 1997, publiés au *Moniteur officiel* de la Roumanie, Partie I<sup>re</sup>, n° 382 du 29 décembre 1997.

**Direct investments  
and development  
of the economic activity**

**EXPEDITIOUS ORDINANCE  
on the stimulation of direct investments**

\*

**LAW  
on the approval of the Expeditious  
Government Ordinance No. 92/1997  
on the stimulation of direct investments**

\*

**EXPEDITIOUS ORDINANCE  
on some measures for the development  
of the economic activity**

# EXPEDITIOUS ORDINANCE on the stimulation of direct investments\*

## CHAPTER I General provisions

**Art. 1.** – The present expeditious ordinance shall establish the general legal rules with regard to the guarantees and facilities the investors and direct investments in Romania shall benefit by.

**Art. 2.** – In the sense of the present expeditious ordinance, the terms and phrases below shall have the following meanings:

a) *direct investment* – participation in the setting up or extension of an enterprise in any of the legal forms provided under the law, the acquisition of shares or capital shares of a trading company, except billcase investments, as well as the establishment or extension in Romania of a branch by a foreign trading company, by:

- financial contribution, in national currency or in convertible currency;
- contribution in kind of corporeal and incorporeal property, movables and/or immovables;
- participation in the increase of the assets of an enterprise by any legal mode of financing;

b) *billcase investment* – acquisition of transferable securities (stocks and shares) in the regulated and organized capital markets for the purpose of obtaining capital gains from dividends and from the interests due to them – resulted from the activity of third parties involved directly in the administration of the issuer – and from the favourable price difference at selling;

c) *investor* – natural or juristic person, resident or non-resident, with domicile or permanent seat in Romania or abroad, who invests in Romania in any of the ways provided under letters a) and b);

d) *resident/non-resident* – persons thus qualified according to the regulations with regard to the currency system.

\* The Expeditious Ordinance of the Government of Romania No. 92/1997 on the stimulation of direct investments was published in the "Monitorul Oficial" (Official Gazette of Romania), Part. I, No. 386 of 30 December 1997.

**Art. 3.** – Rules governing billcase investments, the advantages they benefit by inclusive, shall be established by a special law.

## CHAPTER II

### Guarantees and common facilities

**Art. 4.** – (1) The making of an investment in Romania as well as the possession, use, or disposition over a property are guaranteed and cannot be subjected to a discriminatory measure. Likewise, there cannot be subjected to a discriminatory measure the administration, maintenance, turning to good account, extension, or liquidation of an investment.

(2) Investors shall benefit in Romania mainly by:

- the possibility to carry out investments in any domain and in any legal forms provided by the law;
- just and equitable equality of treatment for Romanian or foreign investors, resident or non-resident in Romania;
- guarantees against nationalization, expropriation or other measures with an equivalent effect;
- fiscal and customs facilities;
- assistance with regard to running through the administrative formalities;
- the right to convert into the currency of the investment the sums of money in Romanian currency (lei) which are due to them from the investment, as well as the transfer of the currency to the country of origin, according to the regulations regarding the foreign currency system;
- the right of investors to choose the courts of justice or of arbitration competent to solve possible litigations;
- the possibility to carry over losses recorded in the course of a financial year on account of the taxable profit of the following financial years;
- the possibility to use an accelerated amortization;
- the possibility to deduce the advertising and publicity expenditures from the taxable profit;
- the possibility to hire foreign citizens, according to the legal provisions in force.

(3) At the same time, investors shall benefit by the rights granted to investors by the laws in force, with a view to the unfolding in good conditions of the activity of enterprises.

(4) The legal system provided under paragraphs (1) to (3) shall not apply to investors operating and to investments functioning in free zones or zones regulated by special laws.

**Art. 5.** – The domains in which investments can be made only on the basis of a licence or authorization, as well as the general conditions under which licences or authorizations may be granted shall be stipulated by law.

**Art. 6.** – Any investor, resident or non-resident juristic person, may acquire any real rights on movables and immovables.

**Art. 7.** – Investors may carry out any currency exchange on Romania's territory, under the conditions stipulated by the regulations of the National Bank of Romania, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I.

**Art. 8.** – (1) Investments may not be nationalized, expropriated, or subjected to measures with an equivalent effect, except cases in which such a measure meets the following conditions:

- a) it is necessary for a cause of public utility;
- b) it is non-discriminatory;
- c) it is carried out in accordance with the express stipulations of the law;
- d) it is made with payment of previously, adequately and effectively established damages.

(2) The damages provided under para. (1) letter d) shall be equivalent to the just market value of the expropriated investment, at the moment immediately previous to the expropriation or before the imminent expropriation became known in a way that would affect the value of the investment.

(3) At the request of the investor, the just market value of the investment may be expressed in freely convertible currency, on the basis of the rate of exchange of the respective currency on the currency market, at the date of the evaluation.

(4) The affected investor shall have the right to a prompt examination of his case, of the evaluation of his investment, and of the payment of damages according to the Romanian law; the examination shall be carried out by a judicial authority or by another competent and independent authority, as

the case may be, in agreement with the international treaties in the matter, Romania is a party to.

### CHAPTER III

#### **Guarantees and facilities for investors non-resident in Romania**

**Art. 9.** – (1) Non-resident investors shall have the same rights and obligations as Romanian investors, in agreement with the provisions in the present chapter.

(2) In case a bilateral agreement of reciprocal promotion and protection of investments, ratified according to the law, or another law would entitle the investor – non-resident natural or juristic person – to a more favourable treatment than that provided under the present expeditious ordinance, the investor in question shall benefit by that treatment.

**Art. 10.** – Investors non-resident in Romania shall have the right to transfer abroad, without any kind of restrictions, after payment of the legal rates and taxes, the following incomes, in freely convertible currency;

a) dividends or profit obtained from a trading company, in case they are shareholders or associates, or the profit from a branch of it;

b) the income obtained in case of an association in participation as well as the incomes obtained from the sale of shares or of capital shares;

c) the amounts of money obtained from the liquidation of a company according to the Law No. 31/1990 on trading companies, with the subsequent modifications and completions, or from the liquidation of a trading company according to the procedure of bankruptcy, regulated by the Law No. 64/1995 on the procedure of judicial reorganization and of bankruptcy, with the subsequent modifications;

d) the amounts of money obtained as damages, as a result of an expropriation or application of another measure with an equivalent effect;

e) other incomes, according to the form of achievement of the investment.

**Art. 11.** – Litigations between non-resident investors and the Romanian state, with regard to the rights and obligations resulting from the provisions under chapter II, under

the present chapter and under chapter V shall be solved at the investor's choice, according to the procedure instituted by:

a) the Law No. 29/1990 on the administrative litigations and the Law No. 105/1992 on the regulation of private international law relations;

b) the Convention on the regulation of disputes with regard to investments between states and persons of other states, concluded in Washington on 18 March 1965, and ratified by Romania by the Decree of the Council of State No. 62/1975, published in the "Buletinul Oficial" (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 related to an investment in the sense of art. 25 para. (1) of the Convention; in such situations, a Romanian company in which the foreign investors hold – according to the Romanian law – a control position, this shall be considered, according to art. 25 para. (2) letter b) under the Convention, as having the nationality of the foreign investors;

c) the Arbitration Regulation UNCITRAL/CNUDCI; in case the arbitrators shall not be designated under the terms of art. 6 or 7 under these regulations, they shall be designated by the secretary-general of the International Centre for the Settlement of Disputes Relating to Investments.

### CHAPTER IV

#### **Fiscal and customs facilities**

**Art. 12.** – (1) Any investment made according to the present expeditious ordinance shall benefit by the fiscal and customs facilities provided under the present chapter.

(2) The application of the measures provided under this chapter and the control of the observance of the legal terms of the granting of these facilities shall be carried out by the fiscal bodies and by the customs bodies.

**Art. 13.** – Investors shall benefit by the following facilities:

a) the import of movables, of corporeal or/and non-corporeal property, which constitute a contribution in kind to the registered capital of a trading company or represents the contribution to an association in participation or to a family association, necessary for the achievement of the object of activity, shall be excepted from the payment of customs duties and from the payment of the value added tax;

b) the import of technological equipment – machinery and tools – forming amortizable assets, according to the Law No. 15/1994 on the writing off of the capital fixed in corporeal and non-corporeal assets, with subsequent modifications, achieved by investors making direct investments, shall be excepted from the payment of customs duties; the list with the commercial denomination and codes from Romania's Import Customs Tariff corresponding to the goods which come under the above-mentioned provisions shall be adopted by decision of the Government at the proposal of the Ministry of Industry and Trade and of the Ministry of Finance;

c) the possibility to choose, on the occasion of the achievement of new investments, between one of the two forms of fiscal incentives, without however cumulating them:

– deduction from the taxable profit of the expenses with regard to amortization, even when the tax-payer has opted for the use of the accelerated depreciation system. The tax-payer's choice to use the accelerated depreciation system shall have to be communicated to the territorial fiscal bodies where he is under an obligation to hand in the return of income, a preliminary approval given by these bodies being no longer necessary;

– deduction, from the taxable profit due to the financial year, of a 20 per cent quota from the cost price of the technological equipment – machinery and tools – forming amortizable assets acquired in the course of the respective financial year; in case the taxable profit is not sufficient to allow full deduction of the amount of money due to the 20 per cent quota mentioned, the difference shall be deducted from the profit due to the following financial years up to the deductible amount, within five years at the most;

d) full deduction from the taxable profit of the advertising and publicity expenditures;

e) recovery of the yearly loss declared by the tax-payers, by the income tax return, from the taxable profits obtained in the following five consecutive years. The recovery of losses shall be made at each payment term of the income tax, according to the legal provisions in force.

## CHAPTER V Transitory and final provisions

**Art. 14.** – The import of the goods provided under art. 13 letter a) shall not be subjected to the special control of the National Agency for the Control of Strategic Exports and of the Prohibition of Chemical Weapons, according to the Government Ordinance No. 31/1994 on the system of imports and exports of strategic products, approved by the Law No. 93/1994, except the case in which the import is achieved with business partners from countries which do not apply similar regulations with regard to the system of imports and exports of strategic products.

**Art. 15.** – Facilities in course of unfolding, established according to the Law No. 35/1991 on the system of foreign investments, with subsequent completions and modifications, according to the Law No. 71/1994 on the granting of additional facilities as compared with the Law No. 35/1991, republished, for attracting foreign investors in industry, and according to the Expeditious Government Ordinance No. 31/1997 on the system of foreign investments in Romania shall be maintained up to the expiry of the terms for which they were granted.

**Art. 16.** – The facilities granted by the present expeditious ordinance shall not be modified over a period of five years.

**Art. 17.** – Within 30 days after the coming into force of the present expeditious ordinance, the Reform Council and the Ministry of Finance shall elaborate and subject for approval to the Government methodological norms for its application.

**Art. 18.** – At the date of coming into force of the present expeditious ordinance there shall be abrogated articles 1 to 10 and articles 16 to 33 under the Expeditious Government Ordinance No. 31/1997 on the system of foreign investments in Romania, published in the “Monitorul Oficial” (Official Gazette of Romania), Part I, No. 125 of 19 June 1997, art. 2 para. (4) under the Government Ordinance No. 70/1994 on the income tax, republished in the “Monitorul Oficial” (Official Gazette of Romania), Part I, No. 40 of 12 March 1997, with subsequent completions and modifications, as well as any other dispositions to the contrary.



**LAW**  
**on the approval of the Expeditious**  
**Government Ordinance No. 92/1997**  
**on the stimulation of direct investments\***

**Art. I.** – There shall be approved the Expeditious Government Ordinance No. 92 of 30 December 1997 on the stimulation of direct investments, published in the “Monitorul Oficial” (Official Gazette of Romania), Part I, No. 386 of 30 December 1997, with the following modifications and completions:

1. Article 1 shall have the following contents:

“Art. 1. – The present expeditious ordinance shall establish the general framework with regard to the guarantee and facilities the direct investments in Romania shall benefit by.”

2. At article 2, the introductory part shall have the following contents:

“Art. 2. – In the sense of the present expeditious ordinance, the terms below shall be defined as follows:”

3. At article 2, letters a), b), and d) shall have the following contents:

“a) *direct investment* – participation in the setting up or extension of an enterprise in any of the legal forms provided under the law, the acquisition of shares or of capital shares of a trading company, except billcase investments, or the setting up and extension in Romania of a branch by a foreign trading company, by:

– financial contribution, in national currency or in convertible currency;

– contribution in kind of corporeal and incorporeal property, movables and/or immovables;

– participation in the increase of the assets of an enterprise by any legal mode of financing;

b) *billcase investment* – acquisition of transferable securities (stocks and shares) in the regulated and organized capi-

\* Law No. 241, the Law on the approval of the Expeditious Government Ordinance No. 92/1997 on the stimulation of direct investments was published in the “Monitorul Oficial” (Official Gazette of Romania), Part I, No. 483 of 16 December 1998.

tal markets and which do not permit the direct participation in the administration of the trading company;”

“d) *resident/non-resident* – persons thus qualified according to the regulations in force with regard to the currency system;”

4. At article 2, after letter d) there shall be introduced the letter e) with the following contents:

“e) *reinvested profit* – the sums of money used from the profit achieved for the modernization of the technologies and the extension of the activity of the trading company, materialized in amortizable corporeal and incorporeal assets, as well as for acquisition of assets, capital shares or of shares through an offer of the State Property Fund.”

5. Article 4 shall have the following contents:

“Art. 4. – (1) Investments made in Romania, as well as the possession, use, or disposition over a property shall benefit by the guarantees and facilities provided under the present expeditious ordinance.

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

a) the possibility to make investments in any domain and in any legal forms provided by the law;

b) just, equitable, and non-discriminatory equality of treatment for Romanian or foreign investors, resident or non-resident in Romania;

c) guarantees against nationalization, expropriation or other measures with an equivalent effect;

d) fiscal and customs facilities;

e) assistance with regard to running through the administrative formalities;

f) the right to convert into the currency of the investment the sums of money in Romanian currency (lei) which are due to them from the investment, as well as the transfer of the currency to the country of origin, according to the regulations regarding the foreign currency system;

g) the right of investors to choose the courts of justice or of arbitration competent to solve possible litigations;

h) the possibility to carry over losses recorded in the course of a financial year on account of the taxable profit of the following financial years;

i) the possibility to use an accelerated amortization;

j) the possibility to deduce the advertising and publicity expenditures from the taxable profit;

k) the possibility to hire foreign citizens, according to the legal provisions in force.

(3) The legal system provided under paragraphs (1) and (2) shall not apply to investors operating and to investments functioning in free zones or in zones regulated by special laws.”

6. Article 5 shall have the following contents:

“Art. 5. – The domains in which investments can be made only on the basis of a licence or authorization, as well as the general conditions under which licences or authorizations may be granted shall be established by normative acts with power of law.”

7. Article 6 shall have the following contents:

“Art. 6. – A trading company, resident or non-resident juristic person, may acquire any real rights on immovables, to the extent necessary for the unfolding of its activity, according to the social object, except lands which can be acquired by Romanian natural or juristic persons.”

8. At article 8, paragraphs (1) and (2) shall have the following contents:

“Art. 8. – (1) Investments may not be nationalized, expropriated, or subjected to measures with an equivalent effect, except cases in which such a measure meets, cumulatively, the following conditions:

- a) they are necessary for a cause of public utility;
- b) they are non-discriminatory;
- c) they are carried out in accordance with the express stipulations of the law;
- d) they are made with payment of damages, previously adequately, and effectively established.

(2) The damages provided under para. (1) letter d) shall be equivalent to the just market value of the expropriated investment, at the moment immediately previous to the expropriation or before the imminent expropriation became known in a way that would affect the value of the investment.”

9. The title of chapter III shall have the following contents:

“Guarantees and facilities for investors, foreign or non-resident in Romania”.

10. Article 9 shall have the following contents:

“Art. 9. – Investors shall have the same rights and obligations, regardless whether they are resident or non-resident, Romanian or foreign, in agreement with the provisions in the present chapter.”

11. Paragraph (2) of article 9 shall become article 9<sup>1</sup> with the following contents:

“Art. 9<sup>1</sup>. – In case a bilateral agreement of reciprocal protection and promotion of investments, ratified according to the law, or another law would entitle the investor, foreign natural or juristic person, to a more favourable treatment than that provided under the present expeditious ordinance, the investor in question shall benefit by that treatment.”

12. At article 10, letter a) shall have the following contents:

“a) dividends or profit obtained from a trading company, a Romanian juristic person, in case they are shareholders or associates.”

13. Article 11 shall have the following contents:

“Art. 11. – Litigations between foreign investors and the Romanian State with regard to rights and obligations resulting from the provisions under chapters II and III, as well as those under chapter V shall be solved at the investor's choice, according to the procedure instituted by:

a) the Law No. 29/1990 on the administrative litigations, and the Law No. 105/1992 on the regulation of private international law relations;

b) the Convention on the regulation of disputes with regard to investments between states and persons of other states, concluded in Washington on 18 March 1965 and ratified by Romania by the Decree of the Council of State No. 62/1975, published in the “Buletinul Oficial” (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 settled by conciliation and/or arbitration. In such situations, a Romanian company in which foreign investors hold – according to the Romanian law – a control position, this shall be considered, according to art. 25 para. (2) letter b) under the Convention, as having the nationality of the foreign investors;

c) the Arbitration Regulations UNCITRAL/CNUDCI; in case the arbitrators shall not be designated under the terms of the Regulations, they shall be designated by the secretary-general of the International Centre for the Settlement of Disputes Relating to Investments.”

14. Article 12 shall be abrogated.

15. At art. 13, letters a), b), and c) shall have the following contents:

“a) exemption from the payment of customs duties and from the payment of the value added tax on the import of goods constituting a contribution in kind to the share capital of a trading company, or which represents the contribution to an association in participation, or to a family association, necessary for achieving the object of business dealt in;

b) exemption from the payment of customs duties and of the value added tax on import, and exemption from payment of the value added tax on acquisitions from the home market, of technological equipment, machinery and tools, forming amortizable assets according to the Law No. 15/1994 on the amortization of the capital fixed in corporeal and incorporeal assets, with subsequent modifications; the list including the commercial denomination and the codes from Romania's Import Customs Tariff, corresponding to the goods which observe the above-mentioned provisions, shall be adopted by decision of the Government, at the proposal of the Ministry of Industry and Trade, and of the Ministry of Finance;

c) deduction from the taxable profit of the expenses with regard to amortization, even in the case in which the taxpayer has chosen to use the accelerated amortization system. The taxpayer's choice to use the accelerated amortization system shall have to be communicated to the territorial fiscal bodies, where he is under an obligation to hand in the return of income, a preliminary approval given by these bodies being no longer necessary;”

16. At article 13, after letter e) shall be introduced letter f) with the following contents;

“f) exemption from the payment of the tax on re-invested profit.”

17. After article 13 shall be introduced article 13<sup>1</sup> with the following contents:

“Art. 13<sup>1</sup>. – (1) For investments that shall be made in the economy, in newly-created companies, exceeding 500,000 US dollars or the equivalent in Romanian currency (lei), except the banking sector, in addition to the facilities provided under art. 13, shall also be granted reductions of the income tax provided in the annex, corresponding to the value of the investment.

(2) In case the investor shall cease the production or voluntarily liquidate the trading company in a period smaller than double of that for which he benefits by the additional facilities provided in the present article, he shall be under an obligation to pay the rates and taxes established, according to the law, for the whole operating period of the investment.”

18. Article 14 shall have the following contents:

“Art. 14. – In case of non-observance of the terms for the granting of the facilities provided under art. 13, there shall be applied the specific sanctions existing in the fiscal and customs legislation in force at the moment of infringement of the norm.”

19. After article 15 shall be introduced article 15<sup>1</sup> with the following contents:

“Art. 15<sup>1</sup>. – (1) Foreign investments, made according to the provisions under the Law No. 35/1991, with subsequent modifications and completions, and under the Law No. 71/1994, shall benefit by the facilities established under these laws up to the expiry of the terms for which they were granted, on the basis of the documents of settlement registered, according to the law, with the register of companies, the attestation with an investor certificate not being necessary. These investments shall be opposable to the state authorities and third parties, and attest the facilities they benefit by and the investor certificates, too, issued by the Department for the Promotion of Foreign Investments from the Ministry of Privatization for foreign investments registered according to the provisions under the Expeditious Government Ordinance No. 31/1997.

(2) For the contracts of sale and purchase of shares, concluded over the period from 19 June to 29 December 1997 between the State Property Fund and foreign investors, and



which are conformable to the provisions of art. 9 para. (1) under the Expeditious Government Ordinance No. 31/1997, additional deeds may be concluded in order to record the assumption, as firm commitments, to the buyer's account, of the terms provided under art. 9 para. (1) letters a) to f). The additional deeds mentioned under this paragraph shall be concluded within three months after the date of coming into force of the present expeditious ordinance."

20. Article 18 shall have the following contents:

"Art. 18. – At the date of coming into force of the present expeditious ordinance there shall be abrogated the Expeditious Government Ordinance No. 31/1997 on the system of foreign investments in Romania, published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 125 of 19 June 1997, art. 2 para. (4) under the Government Ordinance No. 70/1994 on the income tax, republished in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 40 of 12 March 1997, with subsequent modifications and completions, as well as any other provisions contrary to the present expeditious ordinance."

**Art. II.** – The Expeditious Government Ordinance No. 92/1997 on the stimulation of direct investments, with modifications and completions produced by the present law, shall be republished in the "Monitorul Oficial" (Official Gazette of Romania), Part I, giving a new numbering to the texts.

*ANNEX*

**FISCAL FACILITIES**

Value of the investment in freely convertible currency or in Romanian currency (lei), fully achieved (I)	Reduction of the income tax as against the quota in force	Period
USD 0.5 million ≤ I ≤ USD 1 million	10%	2 years
USD 1 million < I ≤ USD 5 million	15%	3 years
USD 5 million < I ≤ USD 20 million	25%	4 years
USD 20 million < I ≤ USD 35 million	50%	5 years
USD 35 million < I ≤ USD 50 million	75%	7 years
I > USD 50 million	100%	10 years

## EXPEDITIOUS ORDINANCE on some measures for the development of the economic activity\*

**Art. 1.** – By the provisions under the present expeditious ordinance shall benefit investments with a major impact on the economic activity, except those from the banking sector, services and trade, which are made in trading companies by investors – natural or juristic, Romanian or foreign persons – and as a result of which one of these holds the controlling interests.

**Art. 2.** – In the sense of the present expeditious ordinance the following terms and phrases shall have the following significations:

1. *investment with major impact on economic activities* – participation in the settlement of a trading company or in the increase of the share capital of an existing trading company, in any of the legal forms provided by the law, as well as the acquisition of shares of a trading company in which the state or an authority of the local public administration is the main shareholder, provided that one of the following criteria is fulfilled:

a) the value of the investment achieved, distributed over a period of two years maximum, shall be of at least USD 50 million or the equivalent of this amount of money expressed in any other freely convertible currency or in Romanian currency (lei).

In the case of trading companies which have formed the object of a privatization procedure, the total investment in the first year, the acquisition price of the shares inclusive, shall be of USD 50 million minimum or the equivalent of this amount of money expressed in any other freely convertible currency or in Romanian currency (lei);

b) the value of the investment achieved, distributed over a period of three years minimum, shall be of at least USD 50 million or the equivalent of this amount of money expressed

\* The Expeditious Ordinance of the Government of Romania No. 67/1999 on some measures for the development of the economic activity was published in the "Monitorul Oficial" (Official Gazette of Romania), Part I, No. 231 of 24 May 1999.

in any other freely convertible currency or in Romanian currency, for trading companies set up in zones, other than the unfavoured ones, in which the average unemployment rate recorded in the last two years is over ten per cent, and as a result of the investment at least seven hundred new jobs shall be created in the same period;

c) the value of the investment achieved, distributed over a period of three years maximum, shall be of at least USD 60 million or the equivalent of this amount of money expressed in any other freely convertible currency or in Romanian currency (lei), and shall be achieved in the field of dwelling-house building.

2. *subcontracting companies* – trading companies which conclude subcontracting contracts over a duration of five years minimum with a trading company in which an investment has been achieved with a major impact on the economic activity.

**Art. 3.** – Trading companies, Romanian juristic persons, in which investments shall be made with a major impact on the economic activity, such as these are defined under art. 2 point 1, may benefit by the following facilities:

a) exemption from the payment of the customs duties and of the value added tax on the import of goods, as well as exemption from payment of value added tax on goods acquired from the home market, which are constituted into amortizable assets, defined according to the Law. No. 15/1994, with subsequent modifications, as well as of the components leading to their creation, representing a contribution in kind to the share capital of a trading company, or acquired from the contribution in cash to the share capital of the respective trading company;

b) exemption from the payment of the customs duties and of the value added tax on import, as well as exemption from the payment of the value added tax on acquisitions from the home market of technological equipment, machinery and tools, constituting amortizable assets, according to the Law No. 15/1994, with subsequent modifications, including the trading denomination and the codes from Romania's Import Customs Tariff, corresponding to the goods which observe the above-mentioned provisions, shall be adopted by decision of the Government, at the proposal of the Romanian Development Agency, on the basis of the notifications from the Ministry of Industry and Trade, and the Ministry of Finance;

c) exemption from the payment of the customs duties and of the value added tax on imports, as well as exemption from payment of the value added tax on acquisitions from the home market of raw materials, expendable materials, spare parts and components, over a period of two years after the date of the beginning of activity or commissioning of the objective, as the case may be, on condition that the beginning of activity or commissioning of the objective shall be made within three years maximum after the date of registering of the trading company with the register of companies. For trading companies which have formed the object of a privatization procedure, the two year period shall begin after the date established by decision of the Government;

d) exemption from the payment of the income tax for trading companies in which investments are made with a major impact on economic activity in the privatization process, over a period of five years beginning with the first financial year in which profit is obtained, provided that this be achieved within three years maximum after the date established by decision of the Government;

e) exemption from the payment of the income tax, for trading companies in which investments are made with a major impact on the economic activity, and which are constituted after the date of coming into force of the present expeditious ordinance, over a period of ten years, beginning with the first financial year in which profit is obtained, provided that this be achieved within three years maximum after the date of registering of the trading company with the register of companies;

f) exemption from the payment of the tax for the income reinvested in the modernization technologies and extension of the trading company's activity, as well as in the acquisition of assets, capital shares or shares offered by the State Property Fund;

g) granting of a delay of 65 days against the term provided by art. 6 under the Law No. 118/1996 on the constitution and use of the Special Fund of Public Roads, republished, for the transfer of the five per cent quota on the value of the motor vehicles produced and delivered on the home market, over a period of five years since the date established by decision of the Government;

h) granting of a delay of one to three years with the payment of the value added tax for activities deployed within the trading company;

i) exemption from the payment of the value added tax over a period of up to three years in case of investments made in the field of dwelling-house building;

j) granting, free of charge, of the right of property or of user on lands and buildings existing in the private property of the state for dwelling-house building, to Romanian juristic persons.

**Art. 4.** – Subcontracting companies may benefit by the facilities referring to the granting of a delay of three years maximum with the payment of the value added tax, if they achieve at least fifty per cent of their turnover within the framework of the respective agreement.

**Art. 5.** – (1) The Romanian Development Agency, on the basis of the governing programme and of the priority objectives established for each period, together with the competent ministries, specialized institutions subordinated to the Government, the local public administration authorities, as the case may be, shall identify and propose for approval to the Government investment projects and eligible investors according to the provisions of the present expeditious ordinance.

(2) The Government, on the basis of these proposals, shall authorize the Romanian Development Agency for the beginning, deployment, or co-ordination of negotiations, as the case may be, with eligible investors according to the provisions of the present expeditious ordinance.

(3) With a view to accomplishing the mandate received from the Government, the Romanian Development Agency shall collaborate with the competent ministries, with the State Property Fund, with other authorities of the local and central public administration, and shall receive their support.

**Art. 6.** – On the basis of negotiations carried on according to the provisions of the mandate, the Romanian Development Agency together with the competent ministries shall propose to the Government for approval a draft decision including the achievement conditions of the investment and the facilities that shall be granted to it.

**Art. 7.** – (1) Investments achieved under the effect of the Expeditious Government Ordinance No. 92/1997 on the stimulation of direct investments, approved and modified by the Law No. 241/1998, may benefit by the facilities provided under art. 3 of the present expeditious ordinance if they increase the share capital to USD 50 million over a period of one year maximum since the date of coming into force of the present expeditious ordinance, or if they fulfil one of the criteria for granting the facilities at that date.

(2) Investments achieved on the basis of the Law No. 35/1991, republished, of the Law No. 71/1994, and of the Expeditious Government Ordinance No. 31/1997 may benefit by the provisions of the present expeditious ordinance to the extent in which they fulfil one of the criteria of eligibility provided under art. 2, over a period of one year maximum since its coming into force, or fulfil one of the criteria for granting the facilities at that date, and have no longer benefitted by the respective facilities.

**Art. 8.** – (1) In case the trading company in which were made direct investments with major impact on the economic activity shall be liquidated over a period smaller than double of that for which it benefits by one of the facilities provided under the present expeditious ordinance, it shall be under the obligation to pay the rates and taxes established according to the law for the whole period of operation, to which shall be added interests and delay penalties provided by the law.

(2) Rates and taxes due to the state according to para. (1) shall be paid with priority, from the results of the liquidation of the investments or from the rights due to shareholders.

**Art. 9.** – On the date of coming into force of the present expeditious ordinance there shall be abrogated point 13.1 letter c), 13.2, 15, 23, and 32 under the Methodological Norms for the application of the Expeditious Government Ordinance No. 31/1997 on the system of foreign investments in Romania, approved by the Decision of the Government No. 928/1997, published in “Monitorul Oficial” (Official Gazette of Romania), Part. I, No. 382 of 29 December 1997.