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**LOAN NUMBER 4752 RO**

# **Loan Agreement**

**(Programmatic Adjustment Loan)**

**between**

**ROMANIA**

**and**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**Dated September 27, 2004**

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**LOAN NUMBER 4752 RO**

**LOAN AGREEMENT**

AGREEMENT, dated September 27, 2004 between ROMANIA (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received from the Borrower a letter dated July 28, 2004: (i) describing a program of actions, objectives and policies designed to achieve and sustain structural adjustment of the Borrower's economy during the period of 2004-2007 (hereinafter called the Program) which Program consists of actions and policies that have already been taken and adopted, in a satisfactory manner, by the Borrower as described in Schedule 3 to this Agreement (hereinafter called the First Phase of the Program) as well as actions and policies that the Borrower intends to take and adopt prior to the subsequent phases of the Program, (ii) declaring the Borrower's commitment to the execution of the Program, and (iii) requesting assistance from the Bank in support of the Program during the execution thereof;

(B) on the basis, *inter alia*, of the foregoing, the Bank has decided in support of the First Phase of the Program to provide such assistance to the Borrower by making the Loan as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through May 1, 2004), with the modifications thereto set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 41, is modified to read:

"Project" means the First Phase of the Program, referred to in the Preamble to the Loan Agreement, in support of which the Loan is made";

(b) Section 4.01 is modified to read:

“Except as the Bank and the Borrower shall otherwise agree, withdrawals from the Loan Account shall be made in the currency of the deposit account specified in Section 2.02 of the Loan Agreement”.

(c) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions”;

(d) The last sentence of Section 5.03 is deleted;

(e) Section 9.07 (c) shall be modified to read:

“(c) Not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution of the part of the Program referred to in the Preamble to the Loan Agreement, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.”; and

(f) Section 9.05 is deleted and Sections 9.06, 9.07 (as modified above), 9.08 and 9.09 are renumbered, respectively, Sections 9.05, 9.06, 9.07 and 9.08.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “ANRGN” means National Authority for Natural Gas Regulation, established pursuant to the Government Ordinance No. 41/2000 approved by Law 791/2001;

(b) “AVAS” means Authority for Realization of State Assets established pursuant to the Government’s Emergency Ordinance No. 23 dated April 15, 2004;

(c) “CEC” means the Romanian Savings Bank, established pursuant to the Law 66/1996;

(d) "Deposit Account" means the account referred to in Section 2.02 of this Agreement; and

(e) "Tarom S.A." means Romanian Transport Airlines, a company established pursuant to Law 136/1998.

## **ARTICLE II**

### **The Loan**

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount equal to one hundred twenty-three million and four hundred thousand Euro (□23,400,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in support of the First Phase of the Program.

(b) The Borrower shall open, prior to furnishing to the Bank the first request for withdrawal from the Loan Account, and thereafter maintain in its central bank, a deposit account in Euro on terms and conditions satisfactory to the Bank. All withdrawals from the Loan Account shall be deposited by the Bank into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank: (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

(d) No withdrawal shall be made from the Loan Account unless the Bank has received the payment of the fee referred to in Section 2.04 of this Agreement.

Section 2.03. The Closing Date shall be March 1, 2005, or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to one percent (1%) of the amount of the Loan, subject to any waiver of a portion of such fee as may be determined by the Bank from time to time, on or promptly after the Effective Date.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ( $3/4$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

- (i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.
- (ii) "Interest Payment Date" means any date specified in Section 2.06 of this Agreement.
- (iii) "LIBOR Base Rate" means, for each Interest period, the London interbank offered rate for six-month deposits in Euro for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.
- (iv) "LIBOR Total Spread" means, for each Interest Period: (A) one half of one percent ( $1/2$  of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of LIBOR Base Rate and LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of the changes in market practice affecting the determination of the interest rates referred to in this Section 2.06, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to

the Loan upon not less than six (6) months' notice to the Borrower of the new basis. The basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.07. Interest and other charges shall be payable semiannually on April 15 and October 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

### **ARTICLE III**

#### **Particular Covenants**

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program including any action specified in Schedule 3 to this Agreement.

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than six (6) months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the Deposit Account and the audit thereof as the Bank shall have reasonably requested.

#### **ARTICLE IV**

##### **Additional Event of Suspension**

Section 4.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

#### **ARTICLE V**

##### **Effective date**

Section 5.01. The date one hundred twenty (120) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

#### **ARTICLE VI**

##### **Representative of the Borrower; Addresses**

Section 6.01. The Minister of Public Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Public Finance  
17, Apolodor Street  
Bucharest, Romania

Telex:

11239

Facsimile:

401 312 4284

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
INTBAFRAD Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Bucharest, Romania, as of the day and year first above written.

ROMANIA

By /s/ Mihai Nicolae Tanasescu

Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Anand K. Seth

Director  
South Central Europe Country Unit  
Europe and Central Asia



## SCHEDULE 1

### Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank shall have financed or agreed to finance, or which the Bank shall have financed or agreed to finance under another loan;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party, and any other goods designated as environmentally hazardous by agreement between the Borrower and the Bank);

6. expenditures (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation.

**SCHEDULE 2**

**Amortization Schedule**

<u>Date Payment Due</u>	<u>Payment of Principal (Expressed in Euro)</u>
On each April 15 and October 15 beginning April 15, 2010 through April 15, 2021	5,140,000.00
and on October 15, 2021	5,180,000.00

### **SCHEDULE 3**

#### **Actions Referred to in Recital (A) of the Preamble to this Agreement**

#### **Macroeconomic Framework**

1. The Borrower has implemented prudent macroeconomic policy contributing to solid growth performance, and has maintained and has committed to maintain a satisfactory macroeconomic framework, consistent with the core objectives of the Program, including: (a) a growth rate of 4.9 percent in calendar year 2003 and an estimated growth rate of 5.0 percent for calendar year 2004; (b) a 12-month inflation rate, as of December 31, 2003, of 14.1 percent, and an estimated inflation rate of 9.0 percent as of December 31, 2004 end of period; (c) a fiscal deficit of 2.3 percent of Gross Domestic Product (GDP) for calendar year 2003 and an estimated fiscal deficit rate of 2.1 percent of GDP for calendar year 2004; (d) an external current account deficit of 5.9 percent of GDP in calendar year 2003 and a target for the external current account deficit of 5.2 percent of GDP for calendar year of 2004; and (e) an external debt to GDP ratio of 34.6 percent, as of December 31, 2003, and an estimated external debt to GDP ratio of 33.2 percent as of December 31, 2004.

#### **Core Public Sector**

2. The Borrower has enacted legislative amendments, satisfactory to the Bank, to enhance the status and powers of the Superior Council of Magistracy.

3. The Borrower has enacted legislative amendments which eliminated an extraordinary appeal by the Prosecutor General of court decisions entered into force.

4. The Borrower has enacted amendments to the Law on Declaration of Assets, satisfactory to the Bank.

5. The Borrower has established a cross-ministerial Public Financial Management Reform Committee chaired by the Minister of Public Finance, with a mandate and structure satisfactory to the Bank.

6. The Borrower has enacted amendments to the Education Law and the Teachers' Statute, satisfactory to the Bank.

7. The Borrower has approved an action plan, satisfactory to the Bank, for consolidation of the public pension fund.

8. The Borrower has approved the National Hospital Rationalization Strategy and established an Interministerial Steering Committee for monitoring strategy implementation.

Public-Private Interface and Regulated Markets

9. The Borrower has offered for sale 27 (twenty-seven) companies in AVAS' portfolio, the list of which had been agreed with the Bank.

10. The Borrower has taken satisfactory actions for hiring, through a competitive process, a financial advisor for privatization of CEC, with qualification and terms of reference acceptable to the Bank.

11. The Borrower has adopted a strategy, satisfactory to the Bank, for restructuring of the mining sector in 2004-2010, consistent with the European Union's standards and guidelines for environmental protection.

12. The Borrower, through the Ministry of Transport, Construction and Tourism has hired an international advisor for the preparation of a restructuring plan for Tarom S.A., with qualification and terms of reference, satisfactory to the Bank, and has adopted said plan.

13. The Borrower has approved and put on ANRGN's website a timetable, acceptable to the Bank, for the increase of well-head natural gas prices to economic levels, and has made satisfactory progress in implementing said time table.

14. The Borrower has approved a District Heating Strategy, satisfactory to the Bank, and published a synopsis of said strategy in the Official Gazette.

15. The Borrower has enacted amendments to the Insolvency Law, satisfactory to the Bank.

16. The Borrower has enacted a consolidated Law on Capital Markets, satisfactory to the Bank.