

# AGREEMENT BETWEEN THE CZECH REPUBLIC AND ..... FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Czech Republic and the ..... (hereinafter referred to as the "Contracting Parties"),

Desiring to develop economic co-operation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State,

Desiring to encourage enterprises operating within their territory or subject to their jurisdiction to respect internationally recognized standards and principles of corporate social responsibility, notably the OECD Guidelines for multinational enterprises and to pursue best practices of responsible business conduct,

Conscious that the promotion and reciprocal protection of investments in terms of the present Agreement stimulates the business initiatives in this field, economic prosperity and sustainable development of both States,

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and with promotion of consumer protection and labour Standards,

Have agreed as follows:

## Article 1. Definitions

For the Purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset owned or controlled, directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party made in accordance with the laws and regulations of the latter Contracting Party in connection with economic activities, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk and a certain duration.

2. The term "investment" shall include in particular, though not exclusively:

/a/ movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

/b/ shares, stocks and debentures of companies or any other form of participation in a company;

/c/ claims to money or to any performance under contract having a financial value associated with an investment;

/d/ intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

/e/ any right conferred by laws or under contract and any licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or exploit natural resources.

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

For the avoidance of doubt it is confirmed that the legal extension, alteration or transformation of an investment is considered to be a new investment

3. The term "investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

/a/ The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws, provided that a natural person who has dual nationality of the Czech Republic and the ..... shall be deemed to be exclusively a national of the Contracting Party of his or her dominant and effective nationality.

/b/ The term "legal person" shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having the permanent seat and conducting substantial business activities within the territory of that Contracting Parties.

4. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest related to loans, capital gains, shares, dividends, royalties or fees.

5. The term "territory" shall mean:

/a/ in respect of the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

/b/ in respect of the .....00- the territory of the ..... over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law, including the territorial sea and any maritime of submarine area over which the ..... exercises sovereignty, sovereign rights and jurisdiction for the purposes of exploration, exploitation and preservation of the sea-bed, subsoil and natural resources in accordance with international law.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party Shall Encourage and Create Favourable Conditions for Investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

## **Article 3. National and Most-Favoured-Nation Treatment**

1, Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is not less favourable than that which it accords, in like circumstances, to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than that which it accords, in like circumstances, to its own investors or to investors of any third State, whichever is more favourable.

3. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment treaties and other trade agreements. Substantive provisions in other international investment treaties and other trade agreements do not in themselves constitute treatment, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Contracting Party pursuant to those provisions.

4. The obligation referred to in paragraphs 1 and 2 shall not apply to treatment accorded under any bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

5. The treatment granted under this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic, or monetary union, a common market, a free trade area, or other form of regional economic integration.

6. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

## **Article 4. Compensation for Losses**

1. When investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that

paragraph suffer losses in the territory of the other Contracting Party resulting from:

/a/ requisitioning of their property by the forces or authorities of the latter Contracting Party, or

/b/ destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be made in accordance with Article 6.

## **Article 5. Expropriation**

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or before the impending expropriation became publicly known, whichever is earlier. The amount of compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment, shall be made in accordance with Article 6 and be effectively realizable.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party in which territory the investment has been made, of its case and of the valuation of its investment in accordance with the principles set out in this Article.

3. Except in rare circumstances, non-discriminatory, proportionate measures adopted in a good faith by a Contracting Party that are designed and applied to protect legitimate public welfare objectives, such as national security, financial stability, public health, safety, and the environment, do not constitute indirect expropriations.

## **Article 6. Transfers**

1. the Contracting Parties Shall Guarantee the Transfer of Payments Related to Investments and Returns. the Transfers Shall Be Made In a Freely Convertible Currency, without Any Restriction and Undue Delay. such Transfers Shall Include In Particular, Though Not Exclusively:

/a/ Capital and Additional Amounts to Maintain or Increase the Investment;

/b/ Profits, Interest, Dividends and other Current Income;

/c/ Funds In Repayment of Loans;

/d/ royalties or fees; /e/ proceeds of sale or liquidation of the investment; /f/ any payments resulting from compensation by virtue of Articles 4 or 5;

/g/ the earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. For the purpose of this Agreement, exchange rate shall be the prevailing market rate for current transactions at the date of transfer, unless otherwise agreed.

3. Transfers shall be considered to have been made "without any undue delay" in the sense of paragraph 1 of this Article when they have been made within the period normally necessary for the completion of the transfer, unless otherwise agreed between the investor and its financial institution.

4. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining, in exceptional circumstances, measures that restrict transfers if, due to payments and capital movement, the Contracting Party experiences serious balance of payments difficulties or a threat thereof. Such restrictions shall be equitable, neither arbitrary nor unjustifiably discriminatory, of limited duration, imposed in good faith, and not beyond what is necessary to remedy the balance of payments situation.

5. Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of a measure ensuring investors' compliance with its legislation relating to

/a/ the payment of taxes and dues;

/b/ bankruptcy or insolvency proceedings, including recovery and resolution measures, or protection of the rights of creditors;

/c/ criminal or administrative offences;

/d/ ensuring compliance with orders or judgments of the courts or tribunals in its territory.

Such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments and obligations under this Agreement.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

/a/ the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

/b/ that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

## **Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an alleged breach of an obligation of that latter Contracting Party under this Agreement shall be subject to negotiations between the parties to the dispute.

2. If any such dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled, after a period of six months from written notification of claim, investor shall be entitled to submit the case, at its choice, for settlement to:

/a/ the competent court or administrative tribunal of the Contracting Party which is the party to the dispute;

/b/ the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention;

or

/c/ an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

The arbitral awards issued under letter /b/ or /c/ shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation and applicable treaties.

3. The written notice of claim referred to in paragraph 2 shall specify:

/a/ the name and address of the disputing investor;

/b/ the provisions of this Agreement alleged to have been breached and any other relevant provision;

/c/ the legal and factual basis for the claim;

/d/ the relief sought and the approximate amount of damages claimed; and

/e/ the name and address of the beneficial owner of the investment.

4. Once the investor submitted the case for settlement under paragraph 2 letters /b/ or /c/, such option of dispute resolution shall be final.

5. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to disputes submitted under this Article.

6. No claim may be submitted to settlement under paragraph 2 if more than five years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the breach alleged under Article 2 through 7 and knowledge that the investor has incurred loss or damage. The submission of a dispute under paragraph 2 letter /a/ does not preclude an investor from initiating proceedings under paragraph 2 letter /b/ or /c/, provided that the proceedings under paragraph 2 letter /b/ or /c/ are initiated before the date a final determination is made by such court or tribunal, or no later than 6 months from such determination, and no longer than 7 years from the date on which the investor first acquired, or should have first acquired, knowledge of the breach alleged under Article 2 through 7 and knowledge that the investor has incurred loss or damage.

7. If an investment is held:

/a/ by an investor of one Contracting Party in the territory of the other Contracting Party through a person of a third State or of the other Contracting Party; or

/b/ by an investor, who is a legal person of one Contracting Party, in the territory of the other Contracting Party and such an investor is directly or indirectly owned or controlled by a person of a third State or of the other Contracting Party,

the investor of a Contracting Party may not initiate or continue proceedings under this Article if the person of a third State or the person of the other Contracting Party submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the other Contracting Party and the third State. The arbitral tribunal shall terminate the arbitral proceedings if the dispute settlement procedure initiated by the person of a third State or a person of the other Contracting Party is decided on the merits.

8. No claim may be submitted to settlement under paragraph 2 letters /b/ or /c/ unless the written request for the settlement is accompanied by the investor's written waiver of any right to initiate or continue before any administrative tribunal or court under the law of either Contracting Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach under this Agreement.

9. Notwithstanding paragraph 4 and 8, the investor may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a competent court or administrative tribunal of the Contracting Party which is the party to the dispute, provided that the action is brought for the sole purpose of preserving the investor's rights and interests during the pendency of the settlement.

10. The dispute may not be submitted to settlement under paragraph 2 provided that the disputing parties have previously agreed to submit the dispute for resolution in accordance with any applicable dispute settlement procedure.

11. Where two or more investors notify an intention to submit claims to arbitration which have a question of law or fact in common and arise out of the same events or circumstances, the disputing parties shall consult with a view to harmonising the procedures to apply, where all disputing parties agree to the consolidation of the claims, including with respect to the forum chosen to hear the dispute.

12. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, the Contracting Party which is the party to the dispute may, no later than 30 days after the constitution of the arbitral tribunal, and in any event before the first session of the arbitral tribunal, file an objection that a claim is manifestly without legal merit. The Contracting Party which is the party to the dispute shall specify as precisely as possible the basis for the objection. The arbitral tribunal, after giving the disputing parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the disputing parties of its decision on the objection. The decision of the arbitral tribunal shall be without prejudice to the right of the Contracting Party which is the party to the dispute to file an objection to the jurisdiction of the arbitral tribunal or to object, in the course of the proceedings, that a claim lacks legal merit.

13. The arbitral tribunal may order security for costs at a proposal of the Contracting Party which is the party to the dispute. The arbitral tribunal shall especially consider ordering security for costs when there is a reason to believe:

/a/ that the investor will be unable to pay, if ordered to do so, a reasonable part of attorney fees and other costs to the Contracting Party which is the party to the dispute; or

/b/ that the investor has divested assets to avoid the consequences of the arbitral proceedings.

Should the investor fail to pay the security for costs ordered by the arbitral tribunal, the arbitral tribunal shall terminate the arbitral proceedings.

14. The arbitral tribunal shall decide on the basis of law, taking into account the sources of law in the following sequence:

/a/ the provisions of this Agreement and other relevant agreements between the Contracting Parties, as interpreted in accordance with the Vienna Convention on the Law of Treaties;

/b/ other rules of international law.

For greater certainty, the domestic law of the Contracting Parties shall not be part of the applicable law. Where the arbitral tribunal is required to ascertain the meaning of a provision of the domestic law of one of the Contracting Parties as a matter of fact, it shall follow the prevailing interpretation of that provision made by the courts or authorities of that Contracting Party.

For greater certainty, the meaning given to the relevant domestic law made by the arbitral tribunal shall not be binding upon the courts or the authorities of either Contracting Party. The arbitral tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the Contracting Party which is the party to the dispute.

15. Where the arbitral tribunal makes a final award against a disputing party, the arbitral tribunal may award, separately or in combination, only:

/a/ monetary damages and any applicable interest;

/b/ restitution of property, in which case the award shall provide that the disputing party may pay monetary damages and any applicable interest in lieu of restitution.

The arbitral tribunal may not award punitive damages.

16. Unless the disputing parties otherwise agree in writing, the arbitral tribunal shall make its orders on both arbitration and legal costs on the general principle that costs should reflect the disputing parties' relative success and failure in the award or arbitration, except where it appears to the arbitral tribunal that in the particular circumstances this general approach is inappropriate. The arbitral tribunal may also award costs and attorney fees in accordance with this Agreement and the applicable arbitration rules.

17. In the event that both Contracting Parties become parties to an international agreement providing for a multilateral investment tribunal and/or a multilateral appellate mechanism applicable to disputes under this Agreement, the relevant parts of this Agreement shall cease to apply.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or negotiations.

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the necessary appointments. If the President happens to be a national of either Contracting Party, or if the President is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall determine its own procedure.

## **Article 10. Application of other Rules and Special Commitments**

Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to its case.

## **Article 11. Denial of Benefits**

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor if investors of a third State own or control the investor and the denying Contracting Party adopts or maintains measures with respect to the third State that are related to maintenance of international peace and security and prohibit transactions with the investor or would be violated or circumvented if the benefits of this Agreement were accorded to the investor or to its investments.

## **Article 12. Investment and Regulatory Measures/objectives**

1. Nothing in this Agreement shall be construed to affect the right of the Contracting Parties to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity.
2. For greater certainty, the provisions of this Agreement shall not be interpreted as a commitment from a Contracting Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of investments or the investor's expectations of profits.

## **Article 13. Essential Security Interests**

1. Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests,

/a/ relating to criminal or penal offences,

/b/ relating to traffic in arms, ammunition and implements of war and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

/c/ taken in time of war or other emergency in international relations,

/d/ relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or

/e/ in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. A Contracting Party's essential security interests may include interests deriving from its membership in a customs, economic, or monetary union, a common market, a free trade area, or other form of regional economic integration.

## **Article 14. Applicability of this Agreement**

1. This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with laws and regulations of the latter Contracting Party, whether made before or after the entry into force of this Agreement. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

2. This Agreement shall apply without prejudice to the obligations of the Contracting Parties deriving from their membership or participation in any existing or future customs unions, economic union, monetary union, a common market, a free trade area, regional economic integration agreement or similar international agreement such as the European Union.

3. Nothing in this Agreement shall prevent the Contracting Parties from adopting or maintaining reasonable measures for prudential reasons, including:

/a/ the protection of investors, depositors, policy holders, policy claimants, as well as financial market participants, or persons to whom a fiduciary duty is owed by a financial institution;

/b/ the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions;

/c/ ensuring the integrity and stability of the Contracting Party's financial system

## **Article 15. Entry Into Force, Duration and Termination**

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the first day of the second month following the day on which the later notification was received.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing that it terminates this Agreement

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE at .....5- , this ..... day of ..... , 201... in duplicate, each in the Czech, ..... and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Czech Republic For the .....sseseceee