

AGREEMENT BETWEEN THE CZECH AND SLOVAK FEDERAL REPUBLIC AND THE SWISS CONFEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Czech and Slovak Federal Republic and the Swiss Confederation,

Desiring to intensify economic cooperation to the mutual benefit of both States,

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

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States.

Considering the Final Act of the Conference on Security and Cooperation in Europe,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to (a) Natural persons who are nationals of that Contracting Party in accordance with its laws;

(b) Legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) Legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

2) The term "investments" shall include every kind of assets and particularly: (a) Movable and immovable property as well as any other rights in them such as servitudes, mortgages, liens, pledges;

(b) Shares, parts or any other kinds of participation in companies;

(c) Claims and rights to any performance having an economic value;

(d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

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

(3) The term "returns" means the amounts yielded by an investment and in particular though not exclusively includes profit, interest, capital gains, dividends, royalties and fees.

Article 2. Scope of Application

(1) The present Agreement shall apply to investments in the territory of one Contracting Party by investors of the other Contracting Party, if the investments have been made later than 1st January 1950 in accordance with the laws and regulations of the former Contracting Party.

(2) The present Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments that are not within the scope of the Agreement.

Article 3. Promotion, Admission

(1) Each Contracting party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 3, paragraph (2) or this Agreement.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to the investments made within its territory by its own investors or than that granted by each Contracting Party to the investments within its territory by investors of the most favoured nation, if this latter treatment is more favourable. Joint ventures in which investors of both Contracting Parties participate shall enjoy the aforementioned treatment as economic entity.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or an agreement establishing a free trade area, a customs union or a common market.

Article 5. Free Transfer

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

(a) Returns on investments;

(b) Amounts relating to loans incurred for the investment;

(c) Additional contributions of capital necessary for the maintenance or development of the investment;

(d) The proceeds, including possible capital appreciation, arising from the sale or the partial or total liquidation of the investment.

(2) For the transfer in accordance with paragraph (1) of this article investors shall be entitled to purchase, at the official exchange rate, any amount of foreign currency.

Article 6. Dispossession, Compensation

(1) Neither of the Contracting parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereof without regard to its residence or domicile.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph (2) of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 7. More Favourable Provisions

If provisions contained in the legislation of either Contracting Party entitle the investor to a treatment more favourable than is provided for by the present Agreement, those provisions shall prevail over the terms set forth by this Agreement.

Article 8. Principle of Subrogation

If a Contracting Party makes a payment to a national or company pursuant to a guarantee it has granted in respect to an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within six months, the dispute shall upon request of the investor be submitted to an arbitral tribunal. Such arbitral tribunal shall be established as follows:

(a) The arbitral tribunal shall be constituted for each individual case. Unless the parties to the dispute have agreed otherwise, each of them shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State. The arbitrators are to be appointed within two months of the receipt of the request for arbitration and the chairman is to be nominated within further two months.

(b) If the periods specified in paragraph (a) of this Article have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the President is prevented from carrying out the said function or if he is a national of a Contracting Party the provisions in paragraph (5) of Article 10 of this Agreement shall be applied *mutates mutandis*.

© Unless the parties to the dispute have agreed otherwise, the tribunal shall determine its procedure. Its decisions are final and binding. Each Contracting Party shall ensure the recognition and execution of the arbitral award.

(d) Each party to the dispute shall bear the costs of its own member of the tribunal and of the chairman and the remaining cost shall be borne in equal parts by both parties to the dispute. The tribunal may, however, in its award decide on a different proportion of costs to be borne by the parties and this award shall be binding on both parties.

(3) In event of both Contracting Party having become members of the Convention of Washington of March 18, 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes under this article may, upon request of the investor, as an alternative to the procedure mentioned in paragraph 2 of this article, be submitted to the International Center for Settlement of Investment Disputes.

(4) The Contracting State which is a party to the dispute shall at no time whatever during a procedure specified in paragraphs (2) and (3) of this Article or during the execution of the respective sentence assert as a defense the fact that the investor has received compensation under an insurance contract covering the whole or part of incurred damage.

(5) Neither Contracting State shall pursue through diplomatic channels a dispute submitted to arbitration, unless the other Contracting State does not abide by or comply with the award rendered by an arbitral tribunal.

Article 10. Dispute between Contracting Parties

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

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

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

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

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

(6) Subject to other provisions made by the Contracting parties, the tribunal shall determine its procedure.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the day when both Contracting Parties have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Berne, on October 5, 1990, in two originals, in German, Czech and English, each text being equally authentic. In case of divergency the English text shall prevail.

On signing the Agreement between the Czech and Slovak Federal Republic and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in relation to Article 1, agreed on the following clarification, which shall be regarded as an integral part of the said Agreement.

(1) An investor according to Article 1, paragraph (1), letter © may be required to submit proof of such control in order to be recognized by the Contracting Party in the territory of which the investment has been or is to be made as an investor of the other Contracting Party.

(3) Investors referred to in Article 1, paragraph (1), letter © may not raise a claim based on Article 6 of this Agreement of compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

Done at Berne, on October 5, 1990, in two originals, in German, Czech and English, each text being equally authentic. In case of divergency the English text shall prevail.

For the Czech and Slovak Federal Republic For the Swiss Confederation