

AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE PORTUGUESE REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Czech Republic and the Government of the Portuguese Republic (hereinafter referred to as the "Contracting Parties"),

Desiring to develop economic cooperation 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, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, and similar rights;

(b) Shares, stocks and debentures of companies or any other form of participation in a company;

(c) Claims to money or to any performance having an economic value associated with an investment;

(d) Intellectual property rights, including copyrights, industrial property rights, such as 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 law, including the concessions to prospect, research and exploitation of natural resources.

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

2. The term "investor" shall mean any natural or legal person from one of the Contracting Parties who invests in the territory of the other Contracting Party:

(a) "Natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

(b) "Legal person" shall mean any entity with legal personality which has a main office in the territory of one of the Contracting Parties and is constituted or incorporated in accordance with the laws of that Contracting Party.

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

4. The term "liquidation of investment" shall mean that the investment has been terminated in accordance with the legal provisions in force in the territory of the Contracting Party in which the investment in question has been made.

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 investments and returns of investor of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords 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 investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or of any third State, whichever is more favourable.
3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of: paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:
 - (a) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or which either of the Contracting Party is or may become a Party;
 - (b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

When investments by 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, they 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. Resulting payments shall be freely transferable in freely convertible currency without delay.

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 market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest at a normal commercial rate from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in freely convertible currency.
2. The investor affected shall have a right, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.
3. The provisions of this Article shall also apply where a Contracting Party expropriates the assets of a company which has a main office in the territory of one of the Contracting Parties and is constituted or incorporated in accordance with the laws of that Contracting Party, and in which investors of the other Contracting Party own shares.

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) The returns from the investment, as defined in paragraph 3 of Article 1; paragraph 3 of Article 1;
- (c) Funds in service of repayment of loans, recognized by both Contracting Parties to be an investment;
- (d) The proceeds obtained from the sale or liquidation of the investment;
- (e) The compensations and payments in accordance with Articles 4 and 5 of this Agreement; Articles 4 and 5 of this Agreement;
- (f) Any payment made pursuant Article 7; Article 7;
- (g) The earnings of natural persons for work or services done in connection with investments.

2. For the purpose of this Agreement, exchange rates shall be the official rates effective for the current transactions at the date of transfer, unless otherwise agreed.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes 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 the territory of that Contracting Party, 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 which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months, the investor shall be entitled to submit the case to one of the following jurisdictions:

- (a) The competent court of the Contracting Party in the territory in which the investment has been made;

Or

- (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; 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;

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 shall be final and binding on both Parties to the dispute. 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 shall be final and binding on both Parties to the dispute.

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 consultation or negotiation by diplomatic channels.

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 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the 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 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

If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

Article 11. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party and also to the investments made in accordance with its laws and regulations and existing on the date of this Agreement coming into force. However, the Agreement shall not apply to the disputes that have arisen before its entry into force.

Article 13. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify the other of the completion of the constitutional procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent five-year period, either Contracting Party notifies the other in writing of its intention to terminate the 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.

DONE at Prague, this 12 day of November, 1993, in duplicate in the Czech, the Portuguese and the English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Czech Republic

For the Government of the Portuguese Republic