

AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China (hereinafter referred to as the "Contracting Parties"),

Desiring to develop the economic cooperation of both States on the basis of mutual respect for sovereignty, equality and mutual benefit and to encourage and create favourable conditions for investments of investors of one State in the territory of the other State and

Recognizing 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 purpose of this Agreement:

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, including, in particular, though not exclusively:

- (a) Movable and immovable property and other property rights;
- (b) Shares in companies or other form of interest in such companies;
- (c) A claim to money or to any performance having an economic value;
- (d) Intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;
- (e) Concessions conferred by law, including the concessions to search for or exploit natural resources.

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party.

(a) The term "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws.

(b) The term "legal person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with its laws.

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

4. The term "territory" means territory over which the Contracting Party has sovereignty and exercises its jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage 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. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.

Article 3. Treatment of Investment

1. The treatment and protection accorded by either Contracting Party within its territory to investors of the other Contracting Party with respect to investments, returns and business activities in connection with investment shall not be less favourable than that accorded to investors of any third country.

2. The treatment and protection accorded by either Contracting Party within its territory to investors of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favourable than that accorded to its own investors.

3. The treatment and protection as mentioned in paragraph 1 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation 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:

(a) Under domestic due process of law,

(b) On a non-discriminatory basis,

(c) Against compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal rate until the date of payment, shall be made without undue delay, be effectively realisable and be freely transferable in a 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. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee reasonable compensation in respect of their investment to such investor of the Contracting Party who are owners of those shares.

Article 5. Compensation for Damage or Loss

1. When investments by investors of either Contracting Party suffer loss 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 investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities,

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation

shall be accorded fair and appropriate compensation for the damage or loss sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely convertible currency and freely transferable without undue delay.

Article 6. Transfers

1. Either Contracting Party shall guarantee to investors of the other Contracting Party free transfer of the proceeds related to their investments in a freely convertible currency without undue delay. Such transfers shall include in particular, though not exclusively:

(a) Capital and additional funds that are necessary to maintain the operation of or to increase the investment;

(b) Returns;

(c) Repayment of loans similar to shares provided by investors;

(d) Royalties and other fees derived from the rights as defined in section (d) of paragraph 1 of Article 1;

(e) Proceeds resulting from the sale related to total or partial liquidation of the investment;

(f) The earnings of natural persons subject to the laws and regulations of that Contracting Party where investments have been made.

2. The transfers mentioned in this Article shall be made at the official exchange rate of the Contracting Party accepting investment on the date of transfer.

Article 7. Subrogation

If one Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 8. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within three months from the date of their appointment, together select a third arbitrator who is a national of a third. State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within five months from the date of the receipt of the written notice requesting for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Parties, explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute either

(a) To the competent court of the Contracting Party accepting the investment;

(b) To an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force provided that the dispute relates to the amount of compensation for expropriation and any other dispute which is agreed upon by both parties to the dispute. The parties to the dispute may agree in writing to modify these rules.

3. Notwithstanding the provisions of section (b) of paragraph 2 of this Article relating to the submission of the dispute to arbitration, the investor shall have the right to choose the conciliation procedure before the dispute is submitted for arbitration.

4. The arbitral awards shall be recognised and enforced by the Contracting Parties in accordance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 10. Application of other Rules

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made after January 1, 1950 by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal constitutional requirements or legal procedures for the entry into force of this Agreement have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time terminate this Agreement by giving one year's advance notice in writing to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

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

DONE in duplicate at Beijing on December 4, 1991 in the Czech, Chinese and English languages, all texts being equally - authentic. In case of any divergence of interpretation, the English text shall prevail.

The Government of the Slovak Republic and the Government of the People's Republic of China (hereinafter referred to as the "Contracting Parties"),

With regard to the Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments (hereinafter referred to as the "Agreement"),

Have agreed as follows:

(1) Article 3 shall be amended as follows:

"Article 3. Treatment of Investment

1. Each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favourable than that accorded to the investments and associated activities by its own investors.
2. Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favourable than that accorded to the investments and associated activities by the investors of any third State.
3. The provisions of Paragraph 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:
 - a) Its membership in any existing customs union, free trade zone, economic union, common market or any other form of regional economic organization and any international agreement resulting in such unions; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time;
 - b) Any international agreement or arrangement relating wholly or mainly to taxation;
 - c) Any arrangements for facilitating small scale frontier trade in border areas.
4. Paragraph 1 of this Article does not apply to:
 - a) Any existing non-conforming measures maintained within its territory;
 - b) The continuation of any such non-conforming measure;
 - c) Any amendment of any such non-conforming measure to the extent that the amendment does not increase the non-conformity of these measures."

(2) Article 6 of the Agreement shall be amended as follows:

"Article 6. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party the transfer of their investments and returns held in its territory, including:
 - a) Profits, dividends, interests and other legitimate income;
 - b) Proceeds obtained from the total or partial sale or liquidation of investments;
 - c) Payments pursuant to a loan agreement in connection with investments;
 - d) Royalties in relation to the matters in Paragraph 1 (d) of Article 1;
 - e) Payments of technical assistance or technical service fee, management fee;
 - f) Payments in connection with contracting projects;
 - g) Earnings of nationals of the other Contracting Party who work in connection with an investment in its territory.
2. The transfer mentioned above shall be made in a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.
3. Notwithstanding paragraph 1 and 2 above, either Contracting Party may adopt or maintain measures relating to capital transfer:
 - a) In the event of serious balance of payments and external financial difficulties or threat thereof; or
 - b) In cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.
4. Measures referred to in paragraph 3 of this Article:
 - a) Shall not exceed those necessary to deal with the circumstances set out in paragraph 3 of this Article;
 - b) Shall be temporary and eliminated as soon as conditions permit; and

c) Shall be promptly notified to the other Contracting Party."

(3) Paragraph 3 of the Protocol shall be deleted, and paragraph 4 as well as all references to those paragraph, shall be renumbered accordingly.

(4) This Additional Protocol shall be regarded as an integral part of this Agreement.

This Additional Protocol is subject to an approval in accordance with procedures of constitutional formalities required by the law of the Contracting Party to bring this Additional Protocol into force and it shall enter into force on the 30th day from the receiving date of the second notification.

IN WITNESS WHEREOF, the undersigned being duly authorized have signed this Additional Protocol.

Done at, on, in two originals, each in Slovak, Chinese and English languages, all texts being equally authentic. In the case any of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF

FOR THE GOVERNMENT OF

THE CZECH AND SLOVAK FEDERAL REPUBLIC

THE PEOPLE'S REPUBLIC OF CHINA