

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

The Czech Republic and Ireland (hereafter referred to as "the Contracting Parties"),

Desiring to create favourable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset investment in connection with business 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 and any other property rights such as mortgages, liens or pledges;
- (b) Shares, stocks and debentures of a company and 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 does not affect their character as investments.

2. 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.

(b) The term "legal person" shall mean,

(i) With respect to Ireland, any entity incorporated, registered, or constituted in accordance with, and recognised as a legal person by its laws and having its central management and control in the territory of Ireland,

(ii) With respect to the Czech Republic, any entity incorporated or constituted in accordance with, and recognised as a legal person by, its laws and having its permanent seat in the territory of the Czech Republic,

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

4. The term "territory" shall mean:

(a) In the case of Ireland, the territory over which the Government of Ireland exercises jurisdiction, including any area which, in accordance with international law including the United Nations Convention on the Law of the Sea opened for signature at Montego Bay on 10 December 1982 and at New York on 1 July 1983, has been or may hereafter be designated under the

laws of Ireland concerning the continental shelf, as an area within which the rights of Ireland with respect to the sea-bed and sub-soil and their natural resources may be exercised.

(b) In the case of the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investment

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 each 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. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors 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 fair and equitable and not less favourable than that which it accords to investment 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 this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 resulting from any existing or future customs union, or free trade area, or an economic and monetary union, or similar international agreements leading to such unions or institutions or other forms of regional economic co-operation to which either of the Contracting Parties is or may become a party.

Article 4. Compensation for Losses

1. Where 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 of this Article, 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: paragraph 1 of this Article, 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 prompt, adequate and effective 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 freely transferable in freely convertible currency without delay.

Article 5. 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 under due process of law, on a

non-discriminatory basis and shall be accompanied by provision for the payment of prompt, adequate and effective compensation. In particular, such compensation shall amount to the market value of the investment expropriated as determined in accordance with the respective laws of the Contracting Parties, shall include interest, shall be made without delay, be effectively realizable 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/her or its investment in accordance with the principles set out in the Article.

Article 6. Repatriation of Investment and Returns

1. The Contracting Parties shall ensure the free 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) The earnings of natural persons subject to the laws and regulations of that Contracting Party where investments have been made.

2. For the purpose of this Agreement, the 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. Such period shall under no circumstances exceed two months. paragraph 1 of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed two months.

Article 7. Subrogation

1. If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, ("the second Contracting Party"), the second Contracting Party shall recognise:

(a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

(b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

(a) The rights and claims acquired by it by virtue of the assignment, and

(b) Any payments received in pursuance of those rights and claims, as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns, and shall assume the obligations related to the investment.

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 in the territory of that other Contracting Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months from the written notification of a claim, the investor shall be entitled to submit the case either to :

(a) 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;

Or

(b) 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. 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.

3. Any dispute which is referred to ad-hoc arbitration in accordance with paragraph 2(b) above shall be decided in accordance with the provisions of this agreement and where this agreement does not so provide, in accordance with generally recognised principles of international law.

4. 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 should, if possible, be settled through consultations or negotiations.

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

3. Such an 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. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairperson of the tribunal. The Chairperson shall be appointed within two 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, either Contracting Party may, in the absence of any other agreement invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he/she is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or if he/she too 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. Any dispute between the Contracting Parties shall be determined according to the provisions of the Agreement and where the Agreement does not so provide, according to generally recognised principles of international law. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairperson and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement, existing at present or to be established hereafter, 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 his/her case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

3. Nothing in this Agreement shall exempt the persons to whom it applies from any provision of the laws and regulations of Ireland governing entry into, stay in and departure from the territory of Ireland.

Article 11. Taxation

1. Nothing in this Agreement shall:

(a) Affect the rights of either Contracting Party to impose taxes in accordance with its taxation laws; or

(b) Oblige either Contracting Party to extend to investors of the other the benefits of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation to which the other Contracting Party is not a party also.

2. Notwithstanding the provisions of Articles 8 and 9 of this Agreement, any dispute concerning a taxation matter shall be resolved solely in accordance with the domestic laws of the Contracting Parties and any bilateral or multilateral agreement existing at present or to be established hereafter, governing the arbitration or resolution of taxation disputes, to which both Contracting Parties are parties.

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 existing in accordance with the laws of the Contracting Parties on the date this Agreement comes 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 procedures required by its legal system 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. Thereafter, it shall remain in force until the expiration of a twelve month period from the date of receipt by one Contracting Party of a notification through the diplomatic channel from the other Contracting Party 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 in duplicate at Dublin, this 28th day of June, 1996, in the Czech and English languages, both texts being equally authentic.

FOR THE CZECH REPUBLIC

FOR IRELAND