

AGREEMENT between the Government of the Czech Republic and the Federal Government of the Federal Republic of Yugoslavia for the Reciprocal Promotion and Protection of Investments

The Government of the Czech Republic and the Federal Government of the Federal Republic of Yugoslavia, hereinafter referred to as the Contracting Parties,

Desiring to create favourable conditions for greater economic co-operation between the Contracting Parties;

Desiring to create and maintain favourable conditions for reciprocal investments;

Convinced that the promotion and protection of investments will contribute to the enhancement of entrepreneurial initiative and thereby significantly contribute to the development of economic relations between the 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 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:

- (1) Movable and immovable property and any other rights in rem such as mortgages, liens or pledges;
- (2) Shares in and stocks and debentures as well as other kinds of securities of a company and any other form of participation in a company;
- (3) Claims to money or any other claim under contract having an economic value;
- (4) Intellectual property rights, including copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;
- (5) Economic and other rights deriving from concessions granted in accordance with, the laws and regulations of the Contracting Party to the territory whereof the investment is being made, including concessions to explore extract and exploit natural resources.

A change in the form in which assets are invested shall not affect their character as investment.

2. The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes: profit, capital gains, dividends, interests, royalties, patent and licence fees and such other similar fees.

3. The term "investor" shall mean:

- (1) A natural person, having the nationality of one Contracting Party and making investments in the territory of the other Contracting Party;
- (2) A legal entity incorporated, constituted or otherwise duly organized in accordance with the laws and regulations of one Contracting Party, having its permanent seat to the territory of that Contracting Party and making investments to the territory of the other Contracting Party.

4. The term "territory" shall mean:

- (1) 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;

(2) In respect of the Federal Republic of Yugoslavia, the territory of the Federal Republic of Yugoslavia including the area encompassed by land boundaries as well as the sea, maritime or submarine area beyond the territorial sea over which the Federal Republic of Yugoslavia exercises, in accordance with its national laws and regulations and international law, sovereignty, sovereign rights and jurisdiction.

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 subject to its laws and regulation.

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

Article 3. National Treatment 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 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 investors of any third State, whichever is more favourable.

3. The provision of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investor of the other the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(1) Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional co-operation to which either of the Contracting Parties is or may become a party;

(2) Any international agreement or agreement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the later Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be made without undue delay and shall be freely transferable in a freely convertible currency,

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

(1) Requisitioning of their property by the authorities of the other Contracting Party, or

(2) Destruction of their property by the authorities of the other Contracting Party, which was not caused in, combat action or was not required by the necessity of the restitution,

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 without undue delay and shall be freely transferable in a freely convertible currency.

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 in the public interest. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by the payment of prompt, adequate and effective compensation. Such compensation shall correspond to the real value of the investment expropriated immediately before the expropriation or

before the impending expropriation became public knowledge, whichever is the earlier, shall include interest on a commercial basis from the date of expropriation until the date of payment, shall be made without undue delay and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right, under the laws and regulations of the Contracting Party making the expropriation, 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.

Article 6. Transfers

1. Each Contracting Party shall guarantee to the investor of the other Contracting Party, upon payment of all their respective fiscal obligations, free transfers of payments related to their investments including in particular, though not exclusively:

(1) Capital and additional amounts to maintain or increase investment;

(2) Returns;

(3) Funds in repayment of loans;

(4) Proceeds of sale or liquidation of investment;

(5) Compensation paid pursuant to Articles 4 and 5 of this Agreement;

(6) The earning of natural persons subject to the laws and regulations of that Contracting Party where investment have been made,

2. Transfers of payments referred to in paragraph 1 of this Article shall be made without undue delay and without any restrictions, in a freely convertible currency, at the prevailing exchange rate applicable on the date of transfer in the territory of the Contracting Party where the investment has been made.

3. Transfers shall be considered to have been made "without undue delay", when they have been made within the period not exceeding three months.

Article 7. Subrogation

1. If one Contracting Party or its designated Agency makes a payment to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall recognize:

(1) The assignment to the first Contracting Party or its authorized Agency by law or by legal transaction of any rights and claims of the indemnified investor, and

(2) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investments.

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

3. Subrogation of the rights and obligations of the indemnified investor shall also apply to the transfer of payments effected in accordance with Article 6 of this Agreement.

Article 8. Settlement of Disputes between the Contracting Parties

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

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

3. The arbitral tribunal referred to in paragraph 2 of this Article shall be constituted on an ad hoc basis for each individual case in the following way: within three months as of receipt of the request for arbitration each Contracting Party shall appoint one arbitrator. These two arbitrators shall select the third arbitrator – a third country national who on approval by the two Contracting Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two arbitrators.

4. If the arbitral tribunal is not set up within the periods specified in paragraph 3 of this Article, either Contracting Party may,

in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he 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. The arbitral tribunal shall reach its decision on fee basis of the provisions of this Agreement as well as of the generally accepted principles and rules of international law. The arbitral tribunal shall decide by a majority of votes. Its awards shall be final and binding on both Contracting Parties. The tribunal shall establish its own procedure.

6. Each Contracting Party shall bear the expenses of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses shall be borne in equal parts by the Contracting Parties.

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

1. Disputes between an investor of one Contracting Party and the other Contracting Party in relation to an investment made by the investor of the first Contracting Party on the territory of the other Contracting Party, shall be settled, as far as possible, through negotiations.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled by negotiations, the investor may submit the dispute for settlement to a competent court of the Contracting Party which is a party to the dispute.

3. Instead of resorting to the provisions of paragraph 2 of this Article, the investor may choose to submit the dispute for settlement through arbitration to:

(1) An ad hoc arbitral tribunal according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(2) The International Centre for the Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes Between States and Nationals of other States opened for signature at Washington on 18 March 1965 (ICSID Convention).

4. The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party to whose territory the investment has been made.

Article 10. Application of other Provisions

1. 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 investor who own investment in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

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

Article 11. Consultation

Representatives of the Contracting Parties shall hold consultations, when necessary, concerning matters related to the application of this Agreement. These consultations shall be held at the proposal of one of the Contracting Parties at the time and place 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 existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force. 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.

Article 13. Entry Into Force, Duration and Termination of the Agreement

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 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 either Contracting party notifies the other in writing of its intention to terminate the Agreement.
3. With respect to investment made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain effective for a further period of ten years from that date.

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

DONE at Belgrade this 13th day of October 1997, in two originals in the Czech, Serbian and English languages, each text being equally authentic. In case of divergence in interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE CZECH REPUBLIC

FOR THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA