

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

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

DESIRING to intensify economic cooperation to the mutual benefit of both Contracting Parties and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNISING that the promotion of international investment flows and the protection of investment of one Contracting Party in the territory of the other Contracting Party on the basis of this Agreement will be conducive to stimulation of business initiatives,

DESIRING to achieve these objectives in a manner consistent with the protection of health, safety and the environment and the promotion of sustainable development,

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested directly in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the national legislation of the latter and shall include, in particular, though not exclusively: /a/ Movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

/b/ Shares, stocks and debentures of companies or 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, which mean 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 shall not affect their character as investment.

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. Subject to applicable provisions of international law, an investor does not mean a natural person having the nationality of the Host Contracting Party.

/b/ The term "legal person" shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having the seat and conducting substantial business activities within the territory of that Contracting Party.

If the investor is owned or controlled by persons having the nationality of a State that has no diplomatic relations with the Contracting Party in whose territory the investment is made, this investor will not benefit from this Agreement.

3. The term "national legislation of the Contracting Party" shall mean any law, act, or other normative legal act of the Contracting Party.

4. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest related to loans, capital gains, shares, dividends, royalties or fees. Returns, when reinvested, shall enjoy the same treatment as the original investment.

5. The term "territory" shall mean: /a/ 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;

/b/ In respect of the Republic of Azerbaijan, the territory of the Republic of Azerbaijan, including the respective Caspian Sea sector, over which the Republic of Azerbaijan exercises, in accordance with its national law and international law, sovereign rights or 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 in accordance with its national legislation.

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.

3. Each Contracting Party shall, within the framework of its national legislation, consider in good faith all applications for necessary permits in connection with investments in its territory, including authorizations for engaging executives, managers, specialists and technical personnel of the investors' choice.

## **Article 3. Access to Investor Information and Transparency**

Host Contracting Party has the right to seek information from a potential investor or its home state about its corporate governance history and its practices as an investor, including in its home state. Host Contracting Party shall protect confidential business information they receive in this regard. Host Contracting Party may make the information provided available to the public in the community where the investment may be located, subject to the protection of confidential business information and to other applicable national legislation.

## **Article 4. 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 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 to investors of any third State, whichever is more favourable.

3. The National Treatment and Most-Favoured-Nation Treatment provisions of this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic, or monetary union, a common market or a free trade area.

4. The Contracting Party understands the obligations of the other Contracting Party as a member of a customs, economic, or monetary union, a common market or a free trade area to include obligations arising out of an international agreement or reciprocity agreement of that customs, economic, or monetary union, common market or free trade area.

5. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

6. For the avoidance of doubt, the present Article shall apply only in respect of the kinds of treatment offered in Articles 2 to 7 of this Agreement, and shall not apply in respect of Investor's rights to submit disputes arising under this Agreement to any dispute settlement procedure.

## **Article 5. 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:

/a/ Requisitioning of their property by the armed forces or authorities of the latter Contracting Party, or

/b/ Destruction of their property by the armed 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 just and adequate compensation determined on the case by case basis 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 a freely convertible currency without delay.

## **Article 6. 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 value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, whichever is earlier, shall include interest from the date of expropriation until the date of actual payment, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency on the basis of the market rate of exchange applicable for that currency on the day of transfer.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party in which territory the investment has been made, 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 7. Transfers**

1. Without prejudice to measures which a Contracting Party has assumed as a member of or party to a customs, economic or monetary union, a common market or a free trade area, 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/ Profits, interest, dividends and other current income;

/c/ Payments made under a contract, including loan agreements;

/d/ Royalties or fees;

/e/ Proceeds of sale or liquidation of the investment;

/f/ The earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party;

/g/ Payments arising out of the settlement of a dispute.

2. For the purpose of this Agreement, 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.

4. Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measure ensuring investors' compliance with the Host Contracting Party's legislation relating to

/a/ The payment of taxes and dues;

/b/ Bankruptcy or insolvency proceedings, or protection of the rights of creditors;

/c/ Criminal or penal offences; and

/d/ Ensuring compliance with orders or judgments of the court or tribunals of the Host Contracting Party.

Such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments and obligations under this Agreement.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect non-commercial risks of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

/a/ The assignment, whether under the national legislation of the Contracting Party or pursuant to a legal transaction in that country, 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 9. Consultations**

The Contracting Parties agree to consult promptly, on the request of either of them, any dispute arising between them in connection with this Agreement, or any matter relating to the implementation or application of this Agreement or any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

## **Article 10. 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. The place of the negotiations shall be the capital city of the Contracting Party which is a party to the dispute unless the disputing parties otherwise agree.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within six months of the date when the request for the settlement has been submitted, the investor shall be entitled to submit the case, at his choice, for settlement to:

/a/ The competent court or administrative tribunal of the Contracting Party which is the party to the dispute;

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, in the event both Contracting Parties shall have become a party to this Convention;

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.

3. The arbitral tribunal shall decide on the basis of the law, taking into account the sources of law in the following sequence:

- The provisions of this Agreement;
- The law in force of the Contracting Party concerned;
- The provisions of special agreements between an Investor and the Host Contracting Party relating to the investment;
- The general principles of international law.

4. Once the investor has submitted the dispute to the competent court of the Contracting Party in accordance with paragraph 2(a) or to one of the arbitration procedures stipulated in paragraphs 2(b) or 2(c) of this Article, the choice of the procedure is final.

5. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the national legislation of the Contracting Party.

6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party to the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.

## **Article 11. Settlement of Disputes between the Contracting Parties**

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

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 four 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 necessary 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 necessary 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 necessary 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. The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law applicable between the Contracting Parties. The Arbitral Tribunal shall take into consideration the intention of the Contracting Parties in negotiating this Agreement.

## **Article 12. Application of other Rules and Special Commitments**

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 investors who own investments 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 investors of the other Contracting Party in accordance with its national legislation or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

## **Article 13. Essential Security Interests**

1. Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any actions that it considers necessary for the prevention of its essential security interests,

/a/ Relating to criminal or penal offences;

/b/ Relating to traffic in arms, ammunition and implements of war and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

/c/ Taken in time of war or other emergency in international relations, or

/d/ Relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or

/e/ In pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. A Contracting Party's essential security interests may include interests deriving from its membership in a customs, economic, or monetary union, a common market or a free trade area.

## **Article 14. 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 national legislation 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 15. Additions and Amendments**

Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the provision of Article 16 of this Agreement.

## **Article 16. 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 law for bringing this Agreement into force. This Agreement shall enter into force on the thirtieth day after the later 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. 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 five years from the date of termination.

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

DONE in duplicate at Baku this 17th day of May, 2011, in the Czech, Azerbaijani and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.