

TREATY

between the Czechoslovak Socialist Republic

and

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on the mutual promotion and protection of capital investments

The Czechoslovak Socialist Republic

and

are guided by the desire to develop friendly relations in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki on 1 August 1975, and

to strengthen economic cooperation by creating favourable conditions for the realisation of capital investments by investors of one Party in the territory of the other Party,

convinced of the beneficial influence of such an agreement on the improvement of economic relations and confidence building in the field of capital investments,

have agreed as follows:

Article 1.

1 . For the purposes of this Treaty, the term 'investments' shall mean all investments realised by the investor of one Contracting Party in all enterprises of whatever economic sector on the territory of the other Contracting Party, as well as investments in such enterprises realised by the investors of one Contracting Party on the territory of the other Contracting Party through the investor of a third State, in particular:

- a) movable and immovable property and all rights in rem relating thereto in accordance with the laws of the Contracting Party in whose territory the investments are situated,
- b) shares and other forms of participation in the companies,
- c) claims and rights arising from any fulfilment that has an economic value,
- d) industrial rights and other intellectual property rights, including goodwill.

Any change in the legal form of investments or re-investments shall not affect their character within the meaning of this Agreement.

2. the term 'investors' means

a) as far as the Czechoslovak Socialist Republic is concerned :

aa) all legal entities established in accordance with the Czechoslovak legal system;

bb) all physical persons who are nationals of the Czechoslovak Socialist Republic according to the Czechoslovak legal system and who are authorised to act as investors according to the Czechoslovak legal system

b) as regards

Article 2.

1. In an endeavour to ensure the development of mutual economic relations, each Contracting Party undertakes to facilitate on its territory and in accordance with its legal system the capital investments of investors of the other Contracting Party.

2. This Treaty shall also apply to all existing investments in the territory of one Contracting Party realised by investors of the other Contracting Party after 1 January 1980.

3. Each Contracting Party shall ensure treatment on its territory for investments realised by investors of the other Contracting Party that excludes unjustified or discriminatory measures that could hinder their management, maintenance, exploitation, use or liquidation.

4. With the exception of measures taken in the interest of public order, such investments shall enjoy permanent protection and legal certainty which shall be the same as that accorded to the investments of investors of the most favoured nation.

5. However, the provisions of paragraphs 3 and 4 shall not apply to privileges accorded by a Contracting Party to investors of a third State in connection with:

a) its membership of an economic union, customs union, free trade area or international economic community, such as the Council for Mutual Economic Assistance,; or

b) the double taxation agreement or other agreements on tax matters.

Article 3.

1. The investments made by the investors of one Contracting Party in the territory of the other Contracting Party may not be expropriated or subjected to other measures having a similar effect, which directly or indirectly, wholly or partly, deprive them of the right of ownership, with the exception of measures

a) which, according to the law, have been taken for the common good and are not discriminatory in character;

b) which contain provisions on the payment of compensation granted to investors in freely convertible currency and without delay. Their amount shall correspond to the real value of the investments on the day preceding the day on which the measures are adopted or publicly announced.

2. In all cases provided for in this Article, each Contracting Party shall accord to investors of the other Contracting Party in its territory the same treatment as is accorded to investors of the most favoured nation.

Article 4.

1. Each Contracting Party shall ensure to the investors of the other Contracting Party the free transfer, in freely convertible currency, of payments relating to an investment, in particular

a) capital or additional amounts for the maintenance or expansion of the investment;

b) income, dividends, interest or other current income associated with a capital investment;

c) the amounts required to repay loans;

d) the proceeds from the complete or partial liquidation of the company;

e) the compensation pursuant to Article 3 of this Agreement.

2. The transfers referred to in paragraph 1 letter b), c) shall be realised in freely convertible currencies from the company's own funds in which the capital investment was made.

3. The transfers referred to in paragraph 1 shall be effected in accordance with the foreign exchange regulations of the competent Contracting Party at the rate prevailing on the date of the transfer.

4. Each Contracting Party shall take indispensable measures to ensure that, after fulfilment of all requirements under its legal system, the transfers are realised without delay and without incurring other than the usual taxes and expenses.

5. When granting guarantees in accordance with paragraphs 1, 2 and 3, the Contracting Parties shall treat the investors of the other Contracting Party in the same way as the investors of a State receiving the most favoured nation, except in cases governed by the provision of Article 2, paragraph 5 of this Treaty.

Article 5.

1. If, on the basis of a statutory or contractual guarantee, compensation is granted to an investor of one Contracting Party in connection with an interference with an investment which it has realised in the territory of the other Contracting Party, the other Contracting Party shall recognise the transfer of all rights of the investor to the Contracting Party which has granted the compensation.

2. In accordance with the guarantee granted to the investment to which the guarantee relates, the Party may assert any rights that the investor could exercise if it did not transfer those rights to the Party.

Article 6.

1. This Treaty shall not prevent investors from availing themselves of the more favourable provisions of the law in force in the territory of the Contracting Party where the investments are located or of international treaties binding on both Contracting Parties.

2. Investors of one Contracting Party may conclude special agreements with the other Contracting Party, the provisions of which may not, however, be in conflict with this Treaty. Investments realised under such special agreements shall be governed by their provisions and by the provisions of this Treaty.

Article 7.

1. All differences of opinion between the Contracting Parties concerning the interpretation of the application of this Treaty shall, as far as possible, be settled by diplomatic means.

2. If no agreement is reached in the settlement of disagreements through these channels, the disagreement shall be referred to a joint commission composed of the representatives of the Contracting Parties. This commission shall meet immediately at the request of one of the Parties.

3. If it is not possible to settle the disagreement in this way within 6 months of the opening of negotiations, it shall be submitted to the arbitration tribunal at the request of one of the Contracting Parties.

4. The arbitral tribunal shall be constituted on a case-by-case basis as follows:

Each Contracting Party shall appoint one arbitrator and these two arbitrators shall jointly agree on a third arbitrator to preside over the tribunal, who shall be a national of a third state. The arbitrators must be appointed within a period of three months, the chairman within a period of five months from the date on which one party has notified the other party of its intention to submit the dispute to the arbitrator.

5. If the time limits mentioned in paragraph 4 are not observed, the Secretary-General of the UN shall be requested to make the necessary appointments.

6. The arbitral tribunal shall decide in accordance with the provisions of this Treaty and the generally recognised norms and principles of international law.

7. The arbitral tribunal shall determine its rules of procedure prior to the commencement of the arbitration.

8. The arbitral tribunal shall decide by majority vote; its decisions shall be final and binding on both Parties.

9. Each party shall bear the costs of its arbitrator and its appearance at the arbitration hearing. The costs of the chairman and other costs shall be borne equally by the Contracting Parties.

Article 8.

1. Disagreements concerning compensation under Article 3 of this Agreement between a Party and an investor of the other Party shall be notified in writing by the investor of one Party to the other Party, including a detailed explanation. Such differences of opinion shall, as far as possible, be settled amicably.

2. If the disagreement cannot be settled within 6 months of the written notification referred to in paragraph 1, and if no other form of settlement can be agreed between the parties to the dispute, it shall be submitted to the ad hoc arbitration tribunal established in accordance with paragraph 3 on the basis of the investor's draft.

3. The ad hoc arbitration tribunal shall be constituted on a case-by-case basis as follows:

Each party to the dispute shall appoint one arbitrator and these two arbitrators shall jointly appoint a third arbitrator, a national of a third country, who shall be the chairman of the arbitral tribunal. The arbitrators must be appointed within 2 months and the chairman within 3 months of the date on which the investor notifies the other party of its decision to submit the dispute to arbitration.

If the above deadlines are not met, either party to the dispute may request the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

Members of the ad hoc arbitration tribunal must be nationals of the states with which both parties have diplomatic relations.

4. The ad hoc arbitral tribunal shall determine its rules of procedure in accordance with the rules adopted at the Conference of the Commission of the United Nations Organisation for International Trade Law on 15 December 1976.

5. The ad hoc arbitral tribunal shall decide in accordance with:

- the law of the Party to the dispute on whose territory the investment is located, including its conflict of laws rules,
- the provisions of this Agreement,
- the provisions of the specific contract relating to the investments.

6. the decisions of the ad hoc arbitration tribunal shall be final and binding on the parties to the dispute. Each party undertakes to enforce the decision in accordance with its own legal system.

Article 9.

1. This Treaty shall enter into force one month from the date on which the Contracting Parties notify each other that all the conditions required by the constitutional provisions of their States have been fulfilled.

2. This Treaty shall be concluded for a period of ten years. If one of the Contracting Parties does not terminate it at least six months before the end of the current period of validity, it shall be automatically extended for a further ten years.

3. the provisions of this agreement shall continue to apply for ten years from the date of its expiry to investments made up to the date of its expiry.

As proof of this, the authorised representatives of both Contracting Parties have signed this agreement and affixed their seals to it.

Done at at in two originals, each in Czech and language, both texts being equally authentic.

For the Czechoslovak Socialist Republic

For