

# **Agreement Between the Government of the Czech Republic and the Government of the Republic of Indonesia for the Promotion and Protection of Investments**

The Government of the Czech Republic and the Government of the Republic of Indonesia (hereinafter referred to as the "Contracting Parties")

Bearing in mind the friendly relations and economic cooperation existing between the two countries and their people;

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of sovereign equality and mutual benefits;

Recognizing that the Agreement for the Promotion and Protection of Investments will be conducive to the stimulation of investment activities in both countries;

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 investors 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 as well as any other property rights in rem such as mortgages, liens, pledges and similar rights;

(b) Rights derived from shares, bonds and any other form of interest in companies or joint ventures in the territory of the other Contracting Party;

(c) Claims to money or to any performance having an economic and financial value associated with an investment;

(d) Intellectual property rights, technical processes, goodwill and know-how;

(e) Business concessions conferred by law or under contract related to investment including 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 comprise with regard to either Contracting Party

(a) Natural person having the nationality of one of the Contracting Parties in accordance with its laws and investing in the territory of the other Contracting Party;

(b) Legal person constituted or incorporated in accordance with the laws of one of the Contracting Parties having the permanent seat in the territory of that Contracting Party and investing in the territory of the other Contracting Party.

3. The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial practices.

4. The term "territory" shall mean:

(a) In respect of the Czech Republic, the territory, over which the Czech Republic, in accordance with international law exercises sovereign rights and jurisdiction.

(b) In respect of the Republic of Indonesia, the territory of the Republic of Indonesia as defined in its laws.

## **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 invest in its territory and shall admit such investments, in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

## **Article 3. Most-favoured-nation Provisions**

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 investors of any third State.
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 investors of any third State.
3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions and any international agreements or arrangements related to taxation, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.
4. If the Government of the Republic of Indonesia accords in the future after entering into force this Agreement to investments and returns of investors of any third State or to investors of any third State, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which it accords to its own investors or to investments and returns of its own investors, it shall notify the Government of the Czech Republic of that event and the same treatment shall be mutually accorded.

## **Article 4. Expropriation**

1. Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of investors of the other Contracting Party except under the following conditions:
  - (a) The measures are taken for public purpose and under due process of law;
  - (b) The measures are not discriminatory;
  - (c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value without delay before the measure of dispossession became public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such market value cannot be determined, it shall be reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in a freely convertible currency from the Contracting Party.
2. The legality of any expropriation and its procedures, the amount and the method of payment of compensation shall be subject to review under due process of law by a judicial authority in accordance with the laws and regulations in force of the expropriating Contracting Party, and the principles set out in this Article.
3. The provisions of paragraph 1 of this Article shall also apply 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. paragraph 1 of this Article shall also apply 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.

## **Article 5. Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events, 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 requisitioning or destruction of their property caused by actions undertaken by the authorities of the latter Contracting Party, shall have the right to bring the case before the court to obtain restitution or just and adequate compensation for the losses.

## **Article 6. Transfers**

1. The Contracting Parties shall guarantee that the payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- (a) Profit, interest, dividends and other current income;
- (b) Funds necessary
  - (i) For the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
  - (ii) To replace capital assets in order to safeguard the continuity of an investment;
- (c) Additional funds necessary for the development of an investment;
- (d) Funds in repayment of loans;
- (e) Royalties or fees;
- (f) Earnings of natural persons;
- (g) The proceeds of sale or liquidation of the investment;
- (h) Compensation for losses;
- (i) Compensation for expropriation.

2. For the purpose of this Agreement, exchange rates shall be the prevailing market rates effective for the current transaction at the date of transfer, unless other date agreed upon by the parties.

## **Article 7. Subrogation**

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance covering non-commercial risks, which it has accorded in respect of any investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- (a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim by that investor to the former Contracting Party or its designated agency; and
- (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 such an investor.

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

## **Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor**

1. Any disputes between a Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of that former, shall be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date of a written notification by which either party requested amicable settlement, the dispute shall, at the request of the investor concerned, be submitted either to:

- (a) The competent court of the Contracting Party concerned;
- (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; 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

(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. The arbitral awards shall be final and binding on both parties to the dispute.

## **Article 9. Settlement of Disputes between the Contracting Parties Concerning Interpretation and Application of the Agreement**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

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 three 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 two months from the date of appointment of the other two members.

## **Article 10. Applicability of this Agreement**

This Agreement shall apply to investments made by investors of the Czech Republic in the territory of the Republic of Indonesia admitted in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to the future investments made by investors of the Republic of Indonesia in the territory of the Czech Republic and also to the Indonesian investments existing in the territory of the Czech Republic in accordance with the laws applicable to investments, which are valid on the date this Agreement entered into force.

## **Article 11. Application of other Provisions**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that is more favourable, prevail over the present Agreement.

## **Article 12. Consultation and Amendment**

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent.

## **Article 13. Entry Into Force, Duration and Termination**

1. The present Agreement shall enter into force on the date of the latter notification by any Contracting Party of the accomplishment of its internal procedures of ratification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

3. In respect of investments made prior to the date of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 of the present Agreement shall remain in force for a further period of ten years from the date of termination of the present Agreement. Articles 1 to 12 of the present Agreement shall remain in force for a further period of ten years from the date of termination of the present Agreement.

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 appointments. If he 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 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 appointments.

5. The Arbitral Tribunal shall reach its decisions 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 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 Arbitral Tribunal shall determine its own procedure.

DONE in duplicate at Prague, this 17 day of September, 1998 , in the Czech, Indonesian and English languages. All texts are equally authentic. If there is any divergence concerning interpretation, the English text shall prevail.

For the Government of the Czech Republic

For the Government of the Republic of Indonesia