

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

The Czech Republic and the Republic of Bulgaria, hereinafter referred to as the "Contracting Parties",

Desiring to intensify the economic cooperation between the two States, on the base of mutual benefit,

Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State, and

Conscious that the promotion and reciprocal protection of investments stimulates the initiatives in this field,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean 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, but not exclusively:

- (a) Movable and immovable property rights and any other real rights;
- (b) Shares, stocks or other securities or any other form of participation in a company;
- (c) Claims to money or to any performance having an economic value related to an investment;
- (d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill related to an investment;
- (e) Business concessions conferred by law, under a contract or an administrative act of a competent state authority in particular for exploration, processing, extraction or exploitation of natural resources.

No subsequent change of the form in which the investments have been made shall affect their substance as investments, provided that such a change does not contradict the laws of the Contracting Party, in the territory of which the investments have been made.

2. The term "investor" shall mean any person who invests in the territory of the other Contracting Party and who is:

- A natural person with the nationality of a Contracting Party in accordance with its national legislation, or
- Any company, firm, organisation or association with or without juridical personality, incorporated or constituted in accordance with the legislation of either Contracting Party with a seat in its territory.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.

2. In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the initial investments.

3. In compliance with its laws and regulations each Contracting Party shall consider favourably the questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of the members of their families forming part of their household.

### **Article 3. National and Most-favoured-nation Treatment**

1. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of its own investors, with the exception of sectors and matters listed in Annex to this Agreement, or to investments and returns of investors of any third State. Annex to this Agreement, or 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 not less favourable than that which it accords to its own investors or to investors of any third State.

3. The provisions of paragraph 1 and 2 of this Article 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 which may be extended by the former Contracting Party by virtue of:

(a) 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 cooperation to which either of the Contracting Parties is or may become a Party;

(b) Agreements relating to taxation.

### **Article 4. Compensation for Losses**

1. When investments by 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, they 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. When investments of investors of one of the Contracting Parties suffer losses in war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by its forces or authorities,

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

They shall be accorded 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 freely transferable in a freely convertible currency without delay.

### **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 in the territory of the other Contracting Party except in the public interest, under due process of law, on a non-discriminatory basis and upon prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation become public knowledge, shall be made without delay and shall include interest at the rate applicable in the territory of that Contracting Party until the date of payment.

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 or its investment in accordance with the principles set out in this Article.

### **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, after the fulfillment of all their tax obligations, the free transfer of payments related to investments. The transfers shall be made in a freely convertible

currency, without any restriction and undue delay. Such transfers shall include in particular, but not exclusively:

- (a) Capital and additional amounts to maintain or increase the investment;
- (b) Returns from the investment;
- (c) Proceeds obtained from the sale and from the total or partial liquidation of the investment;
- (d) The sums required for payment of the expenses which arise from the operation of the investment, such as loan repayments and royalties or fees;
- (e) Compensation payable in accordance with Article 5;
- (f) The earnings received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

2. The transfers referred to in the preceding paragraph shall be made at the market exchange rate applicable on the date of the transfer in the territory of the Contracting Party where the investment was made.

## **Article 7. Subrogation**

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

- (a) The assignment, whether under the law 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 8. Settlements of Disputes between the Contracting Parties**

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

2. If a dispute between the Contracting Parties cannot thus be settled within six months, after the beginning of negotiations, 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 from 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 by the two Contracting Parties, shall be appointed Chairman of the Tribunal. The Chairman 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 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 appointments. If the Vice-President is also a national of either Contracting Party or if he 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 determines its own procedure. The Arbitral Tribunal reaches its decision on the basis of the provisions of the present Agreement, as well as of the generally accepted principles and rules of international law. The Arbitral Tribunal reaches its decision by majority of votes. Such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of its own member of the Tribunal and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## **Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. For the purposes of this Article an "investment dispute" is defined as a dispute involving

(a) The interpretation or application of an investment agreement between a Contracting Party and an investor of the other Contracting Party;

(b) An alleged breach of any obligation of the Contracting Party under this Agreement with respect to an investor of the other Contracting Party or his investment;

(c) The interpretation or application of any investment authorization granted by a Party's foreign investment authority to such investor, provided that the denial of an investment authorization shall not in itself constitute an investment dispute unless such denial involves an alleged breach of any right conferred or created by the present Agreement.

2. Investment Disputes between an investor of one of the Contracting Parties and the other Contracting Party in connection with his investment made in the territory of the latter Contracting Party shall, as far as possible be settled by the disputing parties in an amicable way.

3. If such disputes cannot be thus settled, the investor concerned may submit the dispute at his choice, for the settlement to:

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

(b) The International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States", opened for signature at Washington D.C. on 18 March 1965, in case both Contracting Parties are parties to the 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).

4. The consent to submit any such disputes to arbitration implies the renunciation of the requirement that the internal administrative or judicial remedies should be exhausted.

5. The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

## **Article 10. Consultations**

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the implementation or interpretation of the present Agreement. The other Contracting Party shall make the necessary arrangements for holding these consultations.

## **Article 11. Application of other Rules and Special Commitments**

Should national legislation of the Contracting Parties or other specific contracts or present or future international agreements applicable between the Czech Republic and the Republic of Bulgaria or other international agreements, to which they are parties, contain regulations, 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. 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 existing investments according to the laws of the Contracting Parties on the date of this Agreement coming 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**

1. This Agreement is subject to ratification and shall enter into force thirty days after the date of exchange of the instruments of ratification.

2 This Agreement shall remain in force for a period of ten(10) years and shall continue in force thereafter unless, one year before the expire of the initial or any subsequent periods, one of the Contracting Parties notifies the other in writing of its

intention to terminate the Agreement.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of ten years from the date of termination.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Authorities, have signed this Agreement.

Done in Sofia on 17th March 1999 in two originals in the Czech, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE CZECH REPUBLIC:

Ivo Svoboda

Minister of Finance

FOR THE REPUBLIC OF BULGARIA:

Muravej Radev

Minister of Finance

## **Annex**

The Republic of Bulgaria reserves the right to make or maintain limited exceptions to the national treatment, as provided for in Article 3, paragraph 1, in the sectors or matters it has indicated below:

"Ownership of real estate; air, rail, and maritime transportation; governmental subsidies; government insurance and loan programs and dealership in government securities."

## **Protocol**

Protocol between the Republic of Macedonia and the Czech Republic amending the Agreement between the Republic of Macedonia and the Czech Republic for the Promotion and Reciprocal Protection of Investments

The Republic of Macedonia and the Czech Republic (hereinafter referred to as the "Contracting Parties");

Having in mind the intentions of the Czech Republic to amend the Agreement between the Republic of Macedonia and the Czech Republic for the Promotion and Reciprocal Protection of Investments signed on June 21, 2001 in Prague (hereinafter referred to as "the Agreement"), in order to comply with its obligations as a Member State of the European Union;

Acknowledging that the Czech Republic, pursuant to Article 307 of the Treaty establishing the European Community and Article 6. 10 of its Act of Accession to the European Union, must take all appropriate steps to eliminate incompatibilities between the Community Law and its other international treaties including the Agreement and;

Having in mind the status of the Republic of Macedonia as a candidate country for the European Union membership and its obligations in the process of accession;

Deciding, as a result, that certain amendments to the Agreement are necessary in order to avoid such incompatibilities;

Have agreed to conclude the following Protocol thereto:

**1.** Article 3 of the Agreement, paragraph 3 is replaced by new paragraph 3, which reads as follows:

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.

After paragraph 3 new paragraphs 4 and 5 are added, which read as follows:

**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 Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

**2.** In Article 6 of the Agreement, at the beginning of the first sentence of paragraph 1, the following words are added:

"Without prejudice to measures adopted by the European Community"

**3.** In Article 8, paragraph 2 of the Agreement, after the words "cannot be thus settled" the following words are added "within six months of the date when the request for the settlement has been submitted".

**4.** After Article 9 of the Agreement new Article 10 is inserted, which reads as follows:

Essential Security Interests

This Agreement shall not preclude the application by either Contracting Party of measures necessary for the maintenance of public order, the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests which may include interests deriving from its membership of a customs, economic or monetary union, a common market or a free trade area."

The subsequent Articles of the Agreement are re-numbered.

**5.** This Protocol shall enter into force on the thirtieth day after the second notification by which the Contracting Parties shall notify each other that their internal legal procedures for its entry into force have been completed. The Protocol shall remain in force as long as the Agreement shall remain in force.

Done at Brussels on 05 May 2009 in two originals, each in the Macedonian, Czech and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.