AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE KINGDOM OF CAMBODIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to develop economic co-operation to the mutual benefit of both States,

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 in terms of the present Agreement stimulates the business initiatives in this field,

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: (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.

(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 in the territory of one of the Contracting Parties.

3. 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.

4. 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 Kingdom of Cambodia, the territory of the Kingdom of Cambodia including the territorial sea as well as those maritime areas adjacent to the outer limit of territorial sea over which the Kingdom of Cambodia has jurisdiction or sovereign rights pursuant to national law which must correspond to international law.

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 laws and regulations.

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.

Article 3. 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 a 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.

Article 4. 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 forces or authorities of the latter Contracting Party, or

(b) Destruction of their property by the 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 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 (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, shall include interest from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency.

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 6. Transfers

1. Without prejudice to measures adopted by the European Community, the 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) Funds in repayment of loans;

(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.

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.

Article 7. 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 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. 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.

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, and other relevant Agreements between the Contracting Parties;

– The law in force of the Contracting Party concerned;

– The provisions of special agreements relating to the investment;

– The general principles of international law.

4. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, 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 three 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.

Article 10. 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 laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 11. 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 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

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 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. 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 ten years from the date of termination.

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

DONE in duplicate at Phnom Penh on 12 May 2008, in the Czech, Khmer and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE CZECH REPUBLIC

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA