

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

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

DESIRING to create favourable conditions for investments made by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNISING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

HAVE agreed as follows:

Article 1. Definitions

(1) For the purposes of this Agreement,

(a) "investment" means every kind of asset invested by an investor of one Contracting Party in connection with economic activities in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter Contracting Party and shall include in particular, though not exclusively:

(i) Movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;

(ii) Shares, stocks, debentures and any other form of participation in a company;

(iii) Claims to money, or to any performance associated with an investment under contract having an economic value;

(iv) Industrial and intellectual property rights associated with an investment, in particular copyrights, patents, utility-model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill;

(v) Any right conferred by laws or under contract and any licences and permits pursuant to laws, including concessions to search for, extract, cultivate or exploit natural resources.

Any change in the form in which assets are or have been invested does not affect their character as investment as defined in this Agreement;

(b) "return" means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;

(c) "investor" means any natural or legal person who invests in the territory of the other Contracting Party;

(i) "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws;

(ii) "legal person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with and recognized as legal person by its laws and having its principal place of business or head office in the territory of one of the Contracting Parties;

(d) "territory" means —

(1) In the case of the Czech Republic,

The territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

(2) In the case of the Republic of Mauritius,

(i) All the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;

(ii) The territorial sea of Mauritius; and

(iii) Any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.

Article 2. Scope of the 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 3. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment encourage the making of investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws, shall admit such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.

(3) Investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party in accordance with this Agreement.

Article 4. Treatment of Investments

(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 provisions of paragraph (1) and (2) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market or other forms of regional cooperation of which either of the Contracting Parties is or may become a member;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 5. Compensation for Losses

(1) Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party 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 derogating from the provisions of paragraph (1) of this Article, investors of either Contracting Party who, in any of the situations 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, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; 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 or observance of any legal requirement;

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.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. The 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 and shall be made without delay and shall be effectively realizable.

(2) The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that Contracting Party of the expropriation case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 7. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and returns.

The transfer of payments 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) Repayments made pursuant to a loan agreement in connection with an investment;
 - (d) Royalties or fees;
 - (e) Proceeds of sale or liquidation of the investment;
 - (f) Payments of compensation under Articles 5 and 6; Articles 5 and 6;
 - (g) Earnings and other remuneration 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) All transfers shall be effected without delay in a freely convertible currency at the prevailing market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate for conversion of currencies into Special Drawing Rights.
- (3) Transfers shall be considered to have been made "without delay" in the sense of paragraph (2) of this Article when they have been made within the period reasonably necessary for the completion of the transfer.
- (4) Notwithstanding paragraphs (1) to (3) of this Article, either Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

- (a) To protect the rights of creditors;
- (b) Relating to or ensuring compliance with laws and regulations on the issuing, trading and dealing in securities and laws and regulations concerning reports or records of transfers; or
- (c) In connection with criminal offences and orders or judgments in administrative and adjudicatory proceedings;

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

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

(1) Subject to paragraph (3) any dispute between an investor of one Contracting Party and the other Contracting Party in

connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to initiate judicial action before the competent court of the Contracting Party accepting the investment.

(3) If a dispute cannot be settled within six months after resort to negotiations as specified in paragraph (1) of this Article, the investor shall be entitled to submit his case to 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 to an arbitrator or to 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 and shall be enforceable in accordance with the domestic legislation.

The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in paragraph (2) of this Article. Notwithstanding action initiated under paragraph (2), the investor may resort to international arbitration under paragraph (3) provided he has withdrawn his case from the competent court under paragraph (2) before the final decision is taken.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Contracting Parties.

(2) If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an 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 arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon 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 arbitrators.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he too 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 and not prevented from discharging such functions 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 final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne equally by the Contracting Parties. The 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, and executed by, both Contracting Parties.

(6) Apart from the above, the tribunal shall determine its own procedure.

Article 10. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment whether under the law or pursuant to the legal transaction in that country to the former Contracting Party or its designated agency of all the rights and claims of the indemnified investor, and shall also recognise that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 11. Application of other Rules

(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 in 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 12. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action in accordance with its laws applied in good faith, on a nondiscriminatory basis and only to the extent and duration necessary for the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

Article 13. Final Clauses

(1) Subject to the matters which are governed by this Agreement, for the avoidance of any doubt, it is declared that all investments shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) The Contracting Parties shall notify each other promptly of the fulfilment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the day following the date of receipt of the last notification.

(3) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.

(4) In respect of investments made prior to the date the notice of termination of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract.

For the Government of the Czech Republic

For the Government of the Republic of Mauritius