

# **Treaty between the Federal Republic of Germany and the Czech and Slovak Federative Republic on the Promotion and Reciprocal Protection of Capital Investments**

The Federal Republic of Germany and the Czech Republic and the Slovak Republic -

In the desire to deepen the bilateral economic cooperation,

In the endeavor to create favorable conditions for mutual investment,

Recognizing that the promotion and mutual protection of investments is appropriate to strengthen all forms of economic initiative, particularly in the field of private entrepreneurship,

Have agreed as follows:

## **Article 1.**

For the purposes of this Treaty

1. The term "investments" means assets of any kind which are invested in accordance with national law, in particular:

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights and other types of participations in companies;
- c) Claims for money used to create an economic value or claims for benefits having an economic value and related to an investment;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trademarks, trade names, technical procedures, know-how and goodwill;
- e) Public-law concessions, including concessions for concessions and concessions;

2. The term "income" means the amounts accruing to an investment, such as profit shares, dividends, interest, royalties or other charges;

3. The term "investor" means a natural person with permanent domicile or a legal person having its registered office in the respective scope of this contract which is entitled to invest.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote investments in its territory by investors from the other Contracting Parties and allow such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) A Contracting Party shall in no way affect the management, use, use or use of the investments of investors of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

(3) Investments and income therefrom, and in the event of their reinvestment, their income will enjoy the full protection of this contract.

## **Article 3.**

(1) Each Contracting Party treats investments of investors of the other Contracting Parties or investments in which investors

of the other Contracting Parties are involved in their territory no less favorable than the investments of their own investors or investments by investors of third States.

(2) Each Contracting Party treats investors of the other Contracting Parties with regard to their activities in connection with investments in their territory no less favorably than their own investors or investors of third States.

(3) This treatment does not relate to privileges granted by a Contracting Party to investors of third countries because of their membership in or association with a customs or economic union, a common market or a free trade area.

(4) The treatment granted in this Article does not relate to the advantages granted by a Contracting Party to third-country investors on the basis of a double-taxation agreement or other agreements on taxes.

#### **Article 4.**

(1) Investments by investors of a contracting party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments by investors of a Contracting Party may be expropriated, nationalized or subject to other measures which are equivalent to expropriation or nationalization in the territory of the other Contracting Parties only in the public interest and for compensation. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank rate until the time of payment; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure, it must be appropriate for the fixing and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified by ordinary proceedings.

(3) Investors in a Contracting Party who suffer losses due to armed conflicts, a state of emergency or turmoil in the territory of the other Contracting Party shall not be treated less favorably by the Contracting Party in respect of reimbursements, compensation, compensation or other consideration than their own investors. Such payments must be freely transferable.

(4) In respect of the matters governed by this Article, the investors of a Contracting Party in the territory of the other Contracting Parties shall enjoy most-favored-nation treatment.

#### **Article 5.**

(1) Each Contracting Party guarantees to the investors of the other Contracting Parties the free transfer of payments in connection with an investment, in particular

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

b) Of income;

c) For repayment of loans as referred to in Article 1 (1) (c);

d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;

e) Of the compensation provided for in Article 4.

(2) The transfer shall be effected immediately at the exchange rate valid on the day of the transfer.

#### **Article 6.**

If a Contracting Party makes payments to its investors on the basis of a guarantee for an investment in the territory of the other Contracting Party, this other Contracting Party shall recognize, without prejudice to the rights of the former Contracting Party pursuant to Article 9, the transfer of all rights or claims of such investors by law or by law to the former Contracting Party. The other Contracting Party also recognizes the entry of the former Contracting Party into these rights and claims of the legal predecessor according to reason and amount. Article 5 shall apply mutatis mutandis to the transfer of payments on the basis of the transferred claims.

#### **Article 7.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the Contracting Parties or which are established in the future are governed by a general or special regulation which grants the investors of the other Contracting Parties more favorable treatment than under this Treaty, This provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of the investments of investors of the other Contracting Parties in its territory.

## **Article 8.**

This Agreement shall also apply to investments made by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in its territory since 1 January 1950.

## **Article 9.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled by negotiation between the two Contracting Parties.

(2) If a disagreement can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State to be appointed as chairman, to be appointed by the two Contracting Parties. Within two months the members shall be appointed to the chairman within three months after the other party has informed the other party in writing that it intends to submit the disputes to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

## **Article 10.**

(1) Disputes concerning investments between one of the Contracting Parties and an investor of the other Contracting Parties shall, as far as possible, be settled amicably between the parties concerned.

(2) If the disagreement can not be settled within a period of six months from the date of their assertion by one of the two parties, it shall be submitted to arbitration at the request of the investor of the other Contracting Parties. Unless the parties to the dispute agree otherwise, the provisions of Article 9 (3) to (5) shall be applied mutatis mutandis with the proviso that the members of the arbitral tribunal shall be appointed by the parties pursuant to Article 9 (3); 3, any party to the dispute may ask the chairman of the Chamber of Arbitration of the Stockholm Chamber of Commerce to make the necessary appointments in the absence of any other arrangements. The arbitration award shall be recognized and enforced in accordance with the Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

(3) The Contracting Party participating in the dispute shall not claim as an objection during an arbitration or the execution of an arbitration award that the investor of the other Contracting Party has received compensation for part of the loss or for the total loss resulting from an insurance.

## **Article 11.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

## **Article 12.**

In accordance with the Quadripartite Agreement of 3 September 1971, this Agreement shall be extended to Berlin (West) in accordance with the established procedures.

## **Article 13.**

(1) This Treaty shall be subject to ratification; The instruments of ratification will be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 12 shall continue to apply for a further fifteen years from the date of expiry of the Treaty.

Done at Prague, this 2nd day of October 1990, in two originals, each in the Czech and German languages, each of these texts shall be equally authentic.

For the Federal Republic of Germany

Hermann Huber

For the Czech Republic and the Slovak Republic

Václav Klaus

## **Protocol**

At the signing of the Treaty between the Federal Republic of Germany and the Czech and Slovak Federal Republic on the Promotion and Reciprocal Protection of Capital Investments, the undersigned Plenipotentiaries also agreed on the following provisions, which form an integral part of the Treaty:

### **1. Ad Article 1**

The claims for money referred to in paragraph 1(c) of this Article shall include claims arising from loans which are related to an equity participation and which, by their purpose and extent, have the character of an equity participation (quasi-equity loans). This does not include loans from third parties, e.g. bank loans on commercial terms.

### **2. Ad Article 2**

The Treaty shall also apply in the areas of the exclusive economic zone and the continental shelf to the extent that international law permits the exercise of sovereign rights or powers in these areas by the respective Contracting Party.

### **3. Ad Article 3**

(a) For the purposes of Article 3, "activity" shall mean, in particular, the management, use and enjoyment of a capital investment. "Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular: Restrictions on the purchase of raw materials and supplies, energy and fuels, and means of production and operation of all kinds, impediments to the sale of products, to access to credit and to domestic and foreign means of payment, and restrictions on the employment of personnel and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 shall not oblige a Contracting Party to extend to investors resident in the territory of the other Contracting Party tax advantages, exemptions and reductions which, according to the tax laws, are granted only to investors resident in its territory.

(c) The Contracting Parties shall, within the framework of their national legislation, give favorable consideration to applications for entry and residence of persons of one Contracting Party who wish to enter the territory of the other Contracting Party in direct connection with an investment of capital; the same shall apply to workers of one Contracting Party who wish to enter and reside in the territory of the other Contracting Party in direct connection with an investment of capital in order to carry on activities as workers. Applications for work permits shall also be considered favorably.

#### **4. Ad Article 4**

The investor shall also be entitled to compensation if measures within the meaning of Article 4, paragraph 2, interfere with the enterprise in which he holds an interest and thereby adversely affect his investment.

#### **5. Ad Article 5**

(a) For the purposes of Article 4 (2) and Article 5 (2), a transfer shall be deemed to have been effected "without undue delay" if it is effected within a period of time normally necessary for compliance with the formalities for the transfer. The period shall commence with the submission of a request to that effect and shall not, under any circumstances, exceed two months.

(b) The exchange rate in force for the purposes of Article 5, paragraph 2, shall be the cross rate resulting from those conversion rates which the International Monetary Fund would apply to conversions of the currencies concerned into Special Drawing Rights at the time of payment.

6. In the case of transportation of goods and persons in connection with a capital investment, a Contracting Party shall neither eliminate nor obstruct the transportation companies of the other Contracting Party and shall, where necessary, grant authorizations for the transportation to be carried out.

Done at Prague, this 2nd day of October 1990, in two originals, each in the Czech and German languages, each text being equally authentic.

For the Federal Republic of Germany

Hermann Huber

For the Czech and Slovak Federal Republic

Vaclav Klaus