

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

The Czech Republic and Malaysia, hereinafter referred to as the "Contracting Parties;"

Desiring to expand and strengthen economic and industrial cooperation to the mutual benefit of both States, and in particular, to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

1. For the purpose of this Agreement:

(a) "investments" means 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, regulations and national policies of the latter and shall include, in particular, though not exclusively:

(i) Movable and immovable property and any other property rights such as mortgages, liens and pledges;

(ii) Shares, stocks and debentures of companies or interests in the property of such companies;

(iii) Claims to money or claims to any performance having financial value associated with an investment;

(iv) Intellectual property rights, including industrial property rights, copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;

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

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees;

(c) "investor" means:

(i) Any natural person who is a national of a Contracting Party in accordance with its laws and who invests in the territory of the other Contracting Party; or

(ii) Any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of a Contracting Party which invests in the territory of the other Contracting Party;

(d) "territory" means:

(i) With respect to the Czech Republic, the territory within which the Czech Republic exercises, in accordance with international law, sovereign rights and jurisdiction;

(ii) With respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(e) "freely usable currency" means the United States dollar, pound sterling, Deutschmark, French franc, Japanese yen or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets;

(f) "national policies" shall mean any policies and administrative guidelines issued by the Government of the respective Contracting Party.

2. Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

## **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, in accordance with its laws, regulations and national policies shall admit such investments.

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. Most-favoured-nation Provisions**

1. Each Contracting Party shall in its territory accord 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. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State 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 resulting from:

(a) Any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

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

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

Investors of one 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 investors of any third State.

## **Article 5. Expropriation**

Neither Contracting Party shall take any measures of expropriation or nationalization against the investments of an investor of the other Contracting Party except under the following conditions:

(a) The measures are taken for a lawful or public purpose and under due process of law;

(b) The measures are non-discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge. Compensation shall be made without delay and shall be freely transferable in freely usable currencies. In case of delay the compensation shall include interest at prevailing commercial rate from the date of the expropriation.

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.

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 6. Transfer**

1. Each Contracting Party shall allow without any restriction the free transfer of payments related to investments and returns. The transfers shall be made in a freely usable currency and without undue delay. Such transfers include in particular, but not exclusively:

- (a) Capital and additional amounts to maintain or increase, the investment;
- (b) The net profits, dividends, royalties, technical assistance and technical fees, interest and other current income, accruing from any investment of the investors of the other Contracting Party;
- (c) The proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;
- (d) Funds in repayment of loans given by investors of one Contracting Party which both Contracting Parties have recognised as investment; and
- (e) The earnings and other compensation of foreign individuals who are employed and allowed to work in connection with an investment in the territory of the Contracting Party.

2. The exchange rate applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance. paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. Notwithstanding paragraph 1 of this Article, transfers are subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred upon it by its laws and regulations at the time the investment is made as well as new laws and regulations thereafter, provided that no investor shall be put in a less favourable position than at the time of commencement of the investment.

4. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to the transfer originating from investments made by investors of any third State. paragraph 1 of this Article a treatment as favourable as that accorded to the transfer originating from investments made by investors of any third State.

## **Article 7. 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 on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, the investor shall be entitled to submit the case either to:

(a) 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; or 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

(b) 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. 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.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated or a Contracting Party has failed to abide by or comply with the award rendered by the Arbitral Tribunal.

## **Article 8. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall 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 (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those 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 Arbitral Tribunal. The Chairman shall be appointed within two (2) 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, in the absence of any other agreement, 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 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 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 on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the Arbitral Tribunal and of 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. 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.

## **Article 9. 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 10. Application 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, regulations and national policies of the Contracting Parties on the date this Agreement entered into force.

## **Article 11. Amendment**

This Agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

## **Article 12. 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 13. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force thirty (30) days after the later date on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date of the latter notification.

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph 3 of this Article. paragraph 3 of this Article.

3. Either Contracting Party may by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or anytime thereafter.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

Done in duplicate at Kuala Lumpur this 9th day of September 1996 in the Czech Language, Bahasa Malaysia and the English Language, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE CZECH REPUBLIC

FOR MALAYSIA