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

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

Desiring to develop economic cooperation of both States on the basis of equality and mutual benefit,

Preoccupied to encourage and create 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, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows :

Article 1. Definitions

For the purpose of the present Agreement

(1) The term "investment" shall comprise every kind of asset invested 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 in rem such as mortgages, liens, pledges, and similar rights;

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

(c) Claims to money or to any performance having an economic value associated with an investment ;

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

(e) Any right conferred by laws or under contract and any licenses and permits pursuant to law, 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 classification as investment , on condition that the alteration was made in accordance with laws and regulations of the Contracting Party in the territory of which the investment has been made.

(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 constitued in accordance with its laws and having its head office in the territory of this Contracting Party.

(3) The term "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees.

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 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 paragraphs 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 Contracting Party the benefit of any treatment, preference or privileges which may be extended by the former Contracting Party by virtue of any customs union, a free trade area, a common market, a regional economic and monetary organisation as well as any international agreement relating wholly or mainly taxation.

Article 4. Compensation for Damage or Losses

When investments of investors of either Contracting Party suffer damage or 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.

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 the provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the effective value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall be made without delay, be effectively realizable and be freely transferable in freely convertible currency.

(2) The investor affected shall have a right to prompt rewiew by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

Article 6. Transfers

(1) The Contracting Party shall permit the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without 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, interests, 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) Payments according to Articles 4 and 5;Articles 4 and 5;

(g) Earnings of natural persons subject to the laws and regulations of that Contracting Party where investments have been made.

(2) For the purpose of this Agreement, exchange rates shall be the prevailing rate effective for the current transactions at the date of transfer, unless otherwise agreed.

(3) Notwithstanding the provisions of paragraph 1 and 2, either Contracting Party may maintain laws and regulations:paragraph 1 and 2, either Contracting Party may maintain laws and regulations:

(a) Requiring reports of currency transfer and,

(b) Imposing income taxes.

Furthermore, either Contracting Party may protect the rights of creditors, or ensure the satisfaction of judgements in adjudicatory proceedings, through the equitable and nondiscriminatory application of its law.

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. 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 continues to exist after 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, in the event both Contracting Parties shall have become a party to this Convention; 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.

(3) The investor shall be entitled to submit the dispute to ICSID or to UNCITRAL according to the paragraph 2 only if:paragraph 2 only if:

(a) The dispute has not been submitted by investor for resolution in accordance with any applicable previously agreed dispute settlement procedures, and

(b) The investor concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdicton of the Contracting Party that is the party to the dispute.

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 consultation or negotiation.

(2) If the dispute cannot be 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 Secretary General of United Nations Organisation to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Deputy Secretary General of United Nations Organisation next in seniority who is not a national of either Contracting Party shall be invited to make the 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 costs 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 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 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. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made after the date of entry into force as well as to investments existing at the time of entry into force and made by Tunisian investors in the territory of the Czech Republic after January 1, 1950 and by the Czech investors in the territory of the Republic of Tunisia after January 1, 1957.

Article 12. Entry Into Force, Duration and Termination

(1) Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law bringing this Agreement into force. This Agreement shall enter into force thirty days after the date of the second notification.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, 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.

Done in duplicate at Tunis, this 6 day of January 1997, in the Czech, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Czech Republic

For the Republic of Tunisia