

AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE STATE OF KUWAIT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Czech Republic and the State of Kuwait (hereinafter referred to as the "Contracting States"),

Desiring to intensify economic co-operation between both Contracting States;

Intending to create favourable conditions for investments by investors of either Contracting State in the territory of the other Contracting State;

Recognizing that the promotion and protection of such investments will be conducive to the stimulation of business initiative and to the increase of the prosperity in both Contracting States.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement and unless the context otherwise requires:

(1) The term "investment" shall mean every kind of assets owned or controlled and invested, either directly or indirectly through an investor of a third state, by an investor of one Contracting State in the territory of the other Contracting State in accordance with the laws and regulations of that Contracting State, and shall include in particular, though not exclusively:

(a) Tangible and intangible, movable and immovable property as well as any property rights such as leases, mortgages, liens, pledges, usufructs and similar rights;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans and securities issued by any investor of a Contracting State;

(c) Any claims to money and claims to any other assets or performance pursuant to contract having an economic value and associated with an investment;

(d) Intellectual and industrial property rights, including but not limited to, copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

(e) Any right conferred by law, contract or by virtue of any licences and permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to manufacture, use and sell products, and rights to undertake other economic and commercial activities and services.

Any change in the form in which assets are invested does not affect their character as investment.

(2) The term "investor" shall mean:

(a) Any natural person holding the nationality of a Contracting State in accordance with its laws; and

(b) With respect to either Contracting State, the Government of that Contracting State and any legal entity constituted under the laws and regulations of that Contracting State and having its head office in that Contracting State such as institutions, development funds, authorities, foundations, establishments, agencies, enterprises, cooperatives, partnerships, corporations, companies, firms, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise.

(3) The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profit, interest, capital gain, dividends, royalty payment and other lawful income including fees or payments in kind.

(4) The term "territory" shall mean:

(a) With respect to the Czech Republic the territory which constitutes the Czech Republic;

(b) With respect to the State of Kuwait all the land and territorial sea of the State of Kuwait recognized by international law as well as any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of the State of Kuwait as an area over which it may exercise sovereign rights or jurisdiction.

(5) The term "associated activities" shall mean activities connected with an investment, which shall be admitted in accordance with the laws and regulations of a Contracting State, and shall include:

(a) The establishment, control and maintenance of branches, agencies, offices or other facilities for the conduct of business;

(b) The organization of companies, the acquisition of companies or interests in companies or in their property, the management, control, maintenance, use, enjoyment and expansion, the sale, liquidation, dissolution or other disposal of companies organized or acquired;

(c) The making, performance and enforcement of contracts related to investments;

(d) The acquisition, ownership, use and disposal by any legal means of property of all kinds;

(e) The borrowing of funds from local financial institutions, as well as the purchase and issuance of equity shares in the local financial markets, and the purchase of foreign exchange for the operation of the investments.

Article 2. Promotion of Investments

(1) Each Contracting State shall in its territory promote investments by investors of the other Contracting State and, in accordance with its laws and regulations, admit such investments and activities associated therewith. It shall also ensure investors of the other Contracting State and their investments fair and equitable treatment.

(2) Each Contracting State will endeavour to take the necessary measures for granting of appropriate facilities, and various forms of promotion for investments made by investors of the other Contracting State, as may be applicable.

(3) Investors of one Contracting State shall be entitled to apply to the competent authorities in the other Contracting State for the appropriate facilities, incentives and other forms of promotion and those authorities shall grant such investors all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as may be determined by the laws and regulations of that Contracting State.

(4) The Contracting States may consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

(5) Investors of either Contracting State shall be permitted to engage top managerial and technical personnel of their choice regardless of nationality, and each Contracting State shall in this respect make available all necessary facilities to the extent permitted by its laws and regulations. Each Contracting State shall, subject to its laws and regulations relating to the entry, stay and work of a natural person, examine in good faith and give sympathetic consideration to requests by investors of the other Contracting State and key personnel who are employed by such investors including family members, to enter and remain temporarily in its territory and to engage in activities connected with the making or the management, maintenance, use, enjoyment or disposal of an investment.

(6) Whenever goods or persons connected with an investment are to be transported, each Contracting State shall to the extent permissible under its relevant laws and regulations permit the carrying out of such transport by enterprises of the other Contracting State.

Article 3. Protection of Investments

(1) Investments by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State in a manner consistent with international law and the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or any other associated activities in connection with investments in its territory of investors of the other Contracting State.

(2) Each Contracting State shall make public all laws, regulations, administrative directives and procedures that pertain or directly affect investments in its territory of investors of the other Contracting State.

(3) Once established, investments shall not be subject in either Contracting State to additional performance requirements

which hinder their expansion or maintenance, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, or which impose any other additional requirements or restrictions which may be considered as detrimental to the viability of the investment.

(4) Each Contracting State shall ensure to investors of the other Contracting State, the right of asserting claims and enforcing rights with respect to investments through the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority. Investors shall also have the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations for the purpose of asserting claims, and enforcing rights, with respect to their investments.

(5) In case of reinvestment of the returns of an investment, these reinvestments and their returns shall enjoy the same protection and treatment as the initial investment. Such protection and treatment shall also apply to the proceeds from the liquidation of an investment.

Article 4. Treatment of Investments

(1) Each Contracting State shall at all times ensure investments, returns and associated activities in connection with such investments, made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments and associated activities of its own investors or investors of any third state, whichever is the most favourable.

(2) Each Contracting State shall accord investors of the other Contracting State, as regards returns, management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other associated activity, treatment not less favourable than that which it accords to its own investors or to investors of any third state, whichever is the most favourable.

(3) However, the provisions of this Article relating to the granting of treatment not less favourable than that accorded by one Contracting State to its own investors or the investors of any third state shall not be construed so as to oblige that Contracting State to extend to the investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, economic union, free trade area, monetary union or similar international agreement or other form of regional cooperative arrangement, to which either of the Contracting States is or may become a party; or

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

(4) Each Contracting State shall not impose on the investor of the other Contracting State mandatory measures, which require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products, or any other measures having the effect of discrimination against investments by investors of the other Contracting State in favour of investments by its own investors, unless such measures are deemed vital for reasons of public order or public health.

Article 5. Compensation for Damage or Loss

(1) When investments made by investors of either Contracting State suffer damage or loss owing to war or other armed conflict, state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting State, they shall be accorded by the latter Contracting State, treatment, as regards restitution, indemnification, compensation or other settlement not less favourable than that which the latter Contracting State accords to its own investors or investors of any third state, whichever is the most favourable for the investor.

(2) Without prejudice to paragraph (1), investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) Requisitioning of their property or part thereof by its forces or authorities; or

(b) Destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt, adequate and effective compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of their property. Resulting payments shall be made in a convertible currency and be freely transferable without delay.

(3) The condition "without delay" within the meaning of this Article and Articles 6 and 7 is deemed to be fulfilled if a repatriation or transfer is made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the request has been submitted and may on no account exceed two months. Articles 6 and 7 is deemed to be fulfilled if a repatriation or transfer is made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the request has been submitted and may on no account exceed two months.

Article 6. Expropriation

(1)

(a) Investments by investors of either Contracting State shall not be nationalised, expropriated or subjected to direct or indirect measures having effect equivalent to nationalisation or expropriation (hereinafter collectively referred to as "expropriation") by the other Contracting State except for the public interest of that Contracting State and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law.

(b) Such compensation shall amount to the actual value of the investment and shall be determined in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately prior to expropriation or at the time when the decision of expropriation was announced or became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such market value shall be determined in a freely convertible currency on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at the prevailing commercial market rate, from the date of expropriation until the date of payment.

Where the fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles, and the amount of compensation finally determined shall be promptly paid to the investor in a convertible currency and allowed to be freely transferred without delay.

(2) The investor affected shall, without prejudice to his rights under Article 9 of this Agreement, have a right to prompt review, under the law of the Contracting State making the expropriation, by a judicial or other competent and independent authority of that Contracting State, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

(3) The provisions of paragraph (1) of this Article shall also apply where a Contracting State expropriates the assets of a company that is incorporated or constituted under the law in force in its own territory, and in which investors of the other Contracting State own shares or other rights or interests.

(4) The provisions of this Article shall apply to any direct or indirect measure of expropriation, nationalisation or other similar measures such as freezing, or blocking of assets, levying of arbitrary taxes, the compulsory sale of all or part of the investment, any state intervention, impairment, deprivation of management or control of any kind with respect to, or a measure resulting in loss to the economic value of, such an investment, if the effect of such measure or measures would be tantamount to expropriation.

(5) Investments by investors of either Contracting State shall not be subjected to sequestration, confiscation or any similar measures except in case of violation of applicable laws and regulations of the host Contracting State and under due process of law.

Article 7. Transfer of Payments Related to Investments

(1) Each Contracting State shall guarantee to investors of the other Contracting State the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

(a) The initial capital plus any additional capital for the maintenance, management and development of the investment;

(b) Returns;

(c) Payments under a contract as referred to in Article 1 (1) (e), including amortisation of principal and accrued interest payment pursuant to a loan agreement; Article 1 (1) (e), including amortisation of principal and accrued interest payment pursuant to a loan agreement;

(d) Royalties and fees for the rights referred to in Article 1 (1) (d); Article 1 (1) (d);

- (e) Proceeds from the sale or liquidation of the whole or any part of the investment;
 - (f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;
 - (g) Payments of compensation pursuant to Articles 5 and 6; Articles 5 and 6;
 - (h) Payments referred to in Article 8; and Article 8; and
 - (i) Payments arising out of the settlement of a dispute.
- (2) Transfers of payments under paragraph (1) shall be effected without delay or restrictions in a freely convertible currency. paragraph (1) shall be effected without delay or restrictions in a freely convertible currency.
- (3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is more favourable to the investor.

Article 8. Subrogation

- (1) If a Contracting State, its designated agency or a company or other enterprise constituted or incorporated in a Contracting State other than an investor (the "Indemnifying Party") makes a payment under an indemnity or guarantee it has assumed in respect of an investment or returns in the territory of the other Contracting State (the "Host State"), or otherwise acquires part or all of the rights and claims of such an investment or returns as a result of the complete or partial default in respect to the investor, the Host State shall recognize:
- (a) The assignment to the Indemnifying Party by law or by legal transaction of part or all of the rights and claims resulting from such an investment; and
 - (b) That the Indemnifying Party is entitled to exercise such rights and enforce such claims and shall assume all obligations related to the investment by virtue of subrogation, to the same extent as its predecessor in title or the original investor.
- (2) The Indemnifying Party shall be entitled in all circumstances to:
- (a) The same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1) above, and paragraph (1) above, and
 - (b) Any payments received in pursuance of those rights and claims,
- As the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

Article 9. Settlement of Disputes between a Contracting State and an Investor

- (1) Disputes between an investor of one of the Contracting States and the other Contracting State concerning an investment of the former in the territory of the latter, shall as far as possible be settled amicably.
- (2) If such disputes cannot be settled within six months from the date either party requested amicable settlement and, in the absence of any previously agreed dispute-settlement procedures, the dispute may, at the election in writing of the investor, be submitted for settlement either to:
- (a) The competent court of the Contracting State which is party to the dispute; or
 - (b) An ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those rules may be modified by the parties to the dispute; or Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those rules may be modified by the parties to the dispute; or
 - (c) The International Centre for Settlement of Investments Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 , provided that the latter Convention is applicable to the dispute in question. Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 , provided that the latter Convention is applicable to the dispute in question.

The arbitration award shall be final and binding on both parties to the dispute and be enforced in accordance with the domestic laws of the Contracting State concerned.

Article 10. Settlement of Disputes between Contracting States

(1) The Contracting States shall endeavour to settle any dispute concerning the interpretation or application of this Agreement through amicable negotiations between the Governments of the two Contracting States.

(2) If the dispute has not been settled within six months following the date on which such negotiations were requested by either Contracting State and unless the Contracting States otherwise agree in writing either Contracting State may, by written notice to the other Contracting State, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

(3) The arbitral tribunal shall be constituted as follows: each Contracting State shall appoint one member, and these two members shall agree upon a national of a third state as their Chairman to be appointed by the Governments of the two Contracting States. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been complied with, either Contracting State may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting State 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 State or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of either Contracting State shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with applicable rules of international law and shall be final and binding on both Contracting States. Each Contracting State shall bear the expenses of the member appointed by that Contracting State, as well as the expenses for its representation in the arbitration proceedings. The cost of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting States, unless the arbitral tribunal, at its discretion, direct that a higher proportion of such costs be borne by one of the Contracting States. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11. Relations between Contracting States

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 12. Preservation of Rights

(1) If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States in addition to this Agreement contains a regulation, whether general or specific, entitling investments or associated activities by investors of the other Contracting State to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

(2) Each Contracting State shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting State.

Article 13. Application

This Agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting State in the territory of the other Contracting State, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

Article 14. Entry Into Force

(1) This Agreement shall be subject to ratification, and each of the Contracting States shall notify the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall enter into force on the thirtieth day after the date of receipt of the last notification.

Article 15. Duration and Termination

(1) This Agreement shall remain in force for a period of twentyfive (25) years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State in writing of its intention to terminate the Agreement.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of fifteen (15) years from the date of termination of the Agreement.

In witness whereof, the respective plenipotentiaries of both Contracting States have signed this Agreement

Done in duplicate at Kuwait on this 8th day of January 1996 corresponding to 17th day Shaban 1416 H, in the Czech, Arabic and English languages, all texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

For The Czech Republic

For The State of Kuwait