

AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH REPUBLIC AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Czech Republic and the Government of the United Arab Emirates (both countries hereinafter collectively referred to as the Contracting States and each referred to as a Contracting State).

Desiring to create favourable conditions for greater economic cooperation between them and particularly for investments by investors of one Contracting State in the territory of the other Contracting State.

Recognizing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase prosperity in both Contracting States.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" shall comprise every kind of asset invested by the Government or by a natural or juridical person of one Contracting State in the territory of the other Contracting State in accordance with the laws, regulations and administrative practices of that State and shall include in a particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

(b) Shares, stocks and debentures of companies or other rights or interests in such companies, loans related to investments and bonds issued by a Contracting State or any of its natural or juridical persons and returns retained for the purpose of re-investments;

(c) Liquid assets, deposits and claims to money or to any performance under contract having economic and financial values associated with an investment;

(d) The copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how, trade secrets, trade names and goodwill;

(e) Any right conferred by law, administrative decisions or contract, including licenses and permits issued pursuant to law, which have an economic value and are necessary for conducting economic activity such as rights to prospect, explore, extract, win or utilize natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investments.

(2) The term "investor" shall mean the Government of a Contracting State or any of its natural or juridical persons who invest in the territory of the other Contracting State:

(a) The term "natural person" shall mean in either of the Contracting State an individual possessing the nationality of that Contracting State in accordance with its laws.

(b) The term "juridical person" shall mean with respect to either Contracting State, any entity established in accordance with, and recognized as juridical person by the law of that Contracting State, such as public and private companies, corporations, business associations, authorities, partnerships, foundations, firms, institutions, establishments, agencies, development funds, enterprises, cooperatives and organizations or other similar entities irrespective of whether their liabilities are limited or otherwise.

(3) The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, share dividends, royalties, management, technical assistance or other fees irrespective of the form in which the return is paid.

(4) The term "territory" shall mean the territory of the Czech Republic or the territory of the United Arab Emirates respectively, as well as those maritime areas, including islands, internal water, the territorial sea, the exclusive economic zone, the continental shelf, the sea bed and the subsoil adjacent to the outer limit of the territorial sea of either of the above territories over which the State concerned exercises sovereign rights in accordance with its domestic laws and the international law.

(5) "Associated activities" include the organization, control, operation, maintenance and disposal of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contracts: the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for import.

(6) The term "freely usable currency" shall mean currency that is widely used to make payments for international transactions and for which there are ready buyers in the principal exchange markets such as United States Dollars, Pound Sterlings, Deutsche Marks, Swiss Francs, French Francs.

Article 2. Promotion and Protection of Investments

(1) Each Contracting State shall encourage and create favourable conditions for investors of the other Contracting State to make investments in its territory and, in exercise of powers conferred by its laws, regulations and administrative practices shall admit such investments and their associated activities.

(2) Investments shall at all times enjoy full protection and security, in a manner consistent with international law.

(3) Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, maintenance, use, enjoyment, acquisition or disposal of investments or rights related to investment and its associated activities in its territory of investors of the other Contracting State shall not in any way be subjected to or impaired by arbitrary, unreasonable or discriminatory measures.

(4)

(i) Each Contracting State shall endeavour to take the necessary measures in accordance with its legislation for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(ii) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host State.

(5) With respect to its tax policies, each Contracting State should strive to accord fairness and equity in the treatment of investment of investors of the other Contracting State.

(6) The Contracting States shall consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States.

(7) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation and establishment of the appropriate joint ventures between the investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.

(8) Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with the laws, regulations and administrative practices of the two Contracting States.

(9) Contracting State shall avoid performance requirements as a condition of establishment, expansion or maintenance of investments, 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 similar requirements.

(10) Each Contracting State shall undertake to provide effective means of asserting claims and enforcing rights with respect to investment Agreement, investment authorizations and properties. Each Contracting State shall not impair the right of the investors of the other Contracting State to have access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority.

(11) Each Contracting State shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

Article 3. National and Most-favoured-nation Treatment

(1) In its territory each Contracting State shall accord to investments and returns of investors of the other Contracting State treatment 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.

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

Article 4. Exceptions

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

(i) Any existing or future customs union, an economic union or free trade area or a common external tariff area or a monetary union or similar international agreement or other forms of regional or sub-regional cooperation arrangements to which either of the Contracting States is or may become a party; or

(ii) Any international or regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or movement of capital.

Article 5. Compensation for Damage or Loss

(1) Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting State 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 to investors of any third State. Such payment shall be freely transferable.

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

(a) Requisition of their investment or property by its forces or authorities.

(b) Destruction of their investment or property 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 and adequate compensation for the damages or losses sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be made in freely usable currency and freely transferable without delay.

Article 6. Nationalization or Expropriation

(1) Investments by the investors of either Contracting State shall not be subject to sequestration, confiscation or any similar measure and shall enjoy full and complete protection and safety in the territory of the other Contracting State.

(2) Neither Contracting State shall take any measure of expropriation or nationalization or freezing of assets, or any other measure having the same effect or to subject the investment to any measure direct or indirect tantamount to expropriation, the compulsory sale of all or part of an investment or the impairment or deprivation of its management or control.

(3) Measures referred to in paragraph (1) and (2) of this Article can be taken only when the following conditions are complied with: paragraph (1) and (2) of this Article can be taken only when the following conditions are complied with:

- (a) Measures are taken for an ultimate and basic public interest;
- (b) Measures are taken in accordance with the domestic constitution and law and general principles of international law;
- (c) Measures are not discriminatory;
- (d) Measures are taken under due process of law by the competent authority or by the competent court.

The investor shall have the right to contest against the expropriation or any such measure to the competent court of the Contracting State which has taken such measures;

- (e) Measures are accompanied by prompt, adequate and effective compensation.

(4) Such compensation shall be computed on the basis of the market value of the investment immediately prior to the moment of time when the decision for nationalization or expropriation was announced or become publicly known and shall be determined in accordance with recognized principles of valuation such as market value; where the market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which he would have been had the compensation been paid immediately after the date of expropriation or nationalization. To achieve this goal the compensation shall include an interest or at such rate as prescribed by law, for the currency in which the investment is denominated from the date of nationalization or expropriation until the date of payment.

(5) When a Contracting State nationalizes or expropriates the investment of a juridical person which is established or licenced under the law in force in its territory and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights of interest, it shall ensure that prompt, adequate and effective compensation is received and allowed to be repatriated.

Such compensation shall be determined and paid in accordance with the provisions of Paragraph (4) of this Article.

Article 7. Repatriation and Transfer of Capital and Returns

(1) The Contracting States shall guarantee to investors of the other Contracting State the unrestricted transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any 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) The net profits, dividends, royalties, technical assistance and technical service fees, interest and other returns, accruing from any investment;
- (c) The proceeds accruing from the sale, total or partial liquidation of any investment;
- (d) Funds in repayment of borrowings;
- (e) Sums appropriated for coverage of expenses connected with the maintenance of investment;
- (f) The net earnings of the nationals who are allowed to work in the investment made in the territory of the other Contracting State.

(2) For the purpose of this Agreement, exchange rates shall be the official rates effective for the current transactions at the date of transfer.

(3) The Contracting States undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of a third State. paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of a third State.

(4) The term "without undue delay" means the transfers made within a period normally required to prepare the formalities of transfer. The time runs from the date when the application together with necessary documents were submitted, in the proper way, to the competent authorities and should not exceed, in any circumstances, a period of two months.

Article 8. Subrogation

(1) If a Contracting State or its designated Agency make payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host State, or have otherwise become subrogated to any of the rights of such investors with respect to such investment, the host State shall recognize:

(a) The right of the other Contracting State or its designated Agency arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) That the other Contracting State or its designated Agency are entitled by virtue of subrogation to enforce such right as their predecessor in title.

(2) The other Contracting State shall however recognize the right of the host State to deduct any unpaid taxes and other charges due from the investor.

(3) If such other Contracting State acquires any amounts in such manner as above, it shall be accorded in respect thereof a treatment not less favourable than that accorded to the funds of investors of the host State or of a third State deriving from investments or associated activities similar to those in which the party indemnified was engaged.

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

(1) Any dispute which may arise between an investor of one Contracting State and the other Contracting State in connection with an investment on the territory of that other contracting State shall be subject to negotiations between the parties in dispute.

(2) If any dispute between an investor of one Contracting State and the other Contracting State can not 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 Settlements of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18th March 1965; Convention on the Settlements of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18th 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.

Article 10. Settlement of Disputes between the Contracting States

(1) Should any dispute arise concerning the interpretation or application of this Agreement the Governments of the contracting States shall try to settle it through diplomatic channels.

(2) If the dispute cannot be so settled within six months after the beginning of the dispute it shall, upon the written request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way: within three months from the receipt of the written request for arbitration, each Contracting State shall appoint one arbitrator. The two arbitrators shall then select a national of a third State who, on the approval by the two Contracting States, shall act as 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 arbitrators.

(4) If, within the period specified in Paragraph (3) of this Article either Contracting State shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be 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 appointment. If the Vice-President also happens to be a national of either Contracting State or 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 State shall be

invited to make the appointment.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States.

Unless the contracting States decided otherwise the tribunal shall determine its own procedure.

Article 11. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting State in accordance with its legislation and regulations by investors of the other Contracting State after the 2nd of December 1971.

Article 12. Relation between Governments

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

Article 13. Application of other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by other international agreements to which both the Contracting States are parties or general principles of law commonly recognized by both Contracting States or domestic law of the host State, nothing in this Agreement shall prevent either Contracting State or any of its investors who own investments in the territory of the other contracting State from taking advantage of whichever rules are the more favourable to their case.

(2) Investments subject to special contracts or commitments undertaken by one Contracting State with respect to the investors of the other Contracting State shall be governed, notwithstanding the provisions of this Agreement, by the terms of these contracts and commitments insofar as their provisions are more favourable than those provided by this Agreement.

Article 14. Entry Into Force, Duration and Termination

(1) Each of the Contracting States shall notify through diplomatic channels the other Contracting State of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on 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 State 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 at Abu Dhabi on 23rd November, 1994 corresponding to 20 th Jamadi Al Thani 1414 H, in duplicate in Czech, the Arabic and the English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE CZECH REPUBLIC

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