

AGREEMENT¹

Between the Government of the Czech Republic and the Government of the Russian Federation Regarding the Promotion and Mutual Protection of Investments

The Government of the Czech Republic and the Government of the Russian Federation (hereafter referred to as the "Contracting Parties"),

leading by desire to promote mutually profitable economic cooperation,

intending to create favourable conditions for the realization of investments by investors of one Contracting Party in the territory of the other Contracting Party,

recognizing that the promotion and mutual protection of investments will stimulate the development of the commercial activity

have agreed as follows:

Article I

Definitions

For the purposes of this Agreement:

1. The term "investor" shall mean:

- a) any natural person who is a citizen of the state of that Contracting Party in accordance with the legislation of that Contracting Party;
- b) any legal person registered and acting in accordance with the existing legislation of any Contracting Party having the permanent seat in the territory of that Contracting Party,

on condition that the natural or legal person is competent, in accordance with the legislation of that Contracting Party, to make investments in the territory of the other Contracting Party.

2. The term "investments" shall mean all kinds of assets which investors of one of the Contracting Party invest in the territory of the other Contracting in accordance with its legislation in relation to realization of business activities in order to profit including, in particular, but not exclusively

- a) movable and immovable property as well as property rights thereto;
- b) shares, stocks and other forms of participation in business enterprises or companies;
- c) claims to money having economic value;
- d) copyrights, rights to industrial property including patents, industrial design right, trademarks, legal names and also technology, "know-how", trade secret and goodwill;

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- e) rights conferred by law or under contract to conduct economic as well as commercial activity related in particular to exploration, extraction, and exploitation of natural resources.

Any alteration of the form in which assets have been invested or reinvested shall not affect the character of investment.

3. The term "returns" means the amounts yielded as a result of investments and includes, in particular, but not exclusively profit, dividends, interest, incomes related to assets evaluation, licence fees and other remunerations payments.

4. The term "territory" shall mean the territory of the Czech Republic or the territory of the Russian Federation and, in relation to the Russian Federation, shall include the exclusive economic zone and the continental shelf over which the Russian Federation exercise sovereign rights and jurisdiction in accordance with the international law.

Article II

Promotion and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its legislation.

2. Each Contracting Party shall, in accordance with its legislation, guarantee to investors of the other Contracting Party full protection and security to investments made by investors of the other Contracting Party.

3. Each Contracting Party shall secure in its territory the fair and equitable treatment to the investment of the investors of the other Contracting Party and shall restrain from passing the illegitimate and discriminatory measures that might hinder the administration, use, ownership and disposal of investments.

Article III

Treatment of Investments

1. Each Contracting Party shall in its territory accord investments, returns and activities related to investments of investors of the other Contracting Party treatment which is no 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 Party shall reserve the right to determine economic fields and areas of activity where activities of foreign investors shall be excluded or restricted in accordance with its legislation. Any such exception or restriction determined by the Contracting Party shall not be applied in relation to the investments realized in its territory by the investors of the other Contracting Party before effectiveness of such exception.

3. The most favourable nation treatment granted in accordance with paragraph 2 of this Article shall not apply to benefits which the Contracting Party is providing or will provide in the future:

- a) in connection with the participation in a free trade area, customs or economic union or regional economic cooperation agreement;

- b) by virtue of agreements between the Russian Federation and the states, which had earlier formed part of the Union of the Soviet Socialist Republics;
- c) on the basis of agreements meant to avoid double taxation, or other arrangements on taxation issues.

Article IV

Compensation for Losses

For the investors of one Contracting Party who made investments in the territory of the other Contracting Party that were damaged due to war, military conflicts, civil disturbance, state of emergency or other similar circumstances the responsible Contracting Party will grant in respect of rehabilitation of property, compensations and other kinds of settlement, the treatment as favourable as that granted to domestic investors or investors of any third state. Any such payment should be processed without any unnecessary delay.

Article V

Expropriation

1. Investments by investors of one Contracting Party made in the territory of the other Contracting Party, shall not be expropriated, nationalized or subjected to measures tantamount to expropriation or nationalization (hereinafter referred to as "expropriation"), except when such measures are taken for public interests and in accordance with the legislation, when they are not discriminatory and are followed by adequate and effective compensation. The payment of the compensation shall be processed without any unnecessary delay. Such compensation shall correspond to the real value of the expropriated investments immediately before the time when the actual or impending expropriation has become known. Until the date of payment the amount of compensation shall be subject to accrued interest based on the interest rate of the Contracting Party in the territory of which the investment were made.

2. The investor whose investments were expropriated shall have a right, under the laws and regulations of the Contracting Party making the expropriation, 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 paragraph 1 of this Article.

Article VI

Transfer of Payments

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, upon fulfilment by them of all tax and charge obligations, a free transfer abroad of payments related to their investments and, in particular, but not exclusively:

- a) capital and additional amounts to maintain or increase the investment;
- b) returns as defined in the paragraph 3 of the Article III of this Agreement;
- c) funds in repayment of loans related to the investment;
- d) proceeds of partial or total sale or liquidation of the investment;
- e) compensation provided for by Articles IV and V of this Agreement;

- f) earnings of personnel engaged from the other Contracting Party to the extent stipulated by the legislation of the Contracting Party where the investment has been made.

2. Transfer of payments referred to in paragraph 1 of this Article shall be made in a freely convertible currency. The rate of exchange applicable on the date of transfer pursuant to the existing exchange regulations of the Contracting Party in whose territory the investments were made shall be used in relation the payment.

Article VII

Subrogation

1. If a Contracting Party or its designated agency makes a payment of compensation to any of its investors under a guarantee against non-commercial risks, granted in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of all rights of such an investor to the former Contracting Party or its designated agency.

2. A Contracting party or its designated agency shall be entitled to the same extent to exercise any rights and claims which the investor would have been entitled to exercise.

Article VIII

Settlement of Disputes between a Contracting party and an Investor of the other Contracting Party

1. Any dispute between one of the Contracting Parties and an investor of the other Contracting Party arising in connection with an investment, including disputes relating to the amount, conditions and procedure of payment of compensation shall be settled, as far as possible, through negotiations.

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

- a) to a competent court or arbitration tribunal of the Contracting Party in the territory of which the investment has been made;
- b) to the International Centre for Settlement of Investment Disputes (Centre), for the implementation of the Arbitration Procedures as soon as both the Contracting Parties have acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done in Washington D.C. on March 18, 1965 (Convention), or to the Additional Facility of the Centre, in case the Czech Republic or the Russian Federation haven't joined the Convention;
- c) to an ad hoc arbitration tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An Arbitration decision shall be final and binding upon both parties to the dispute.

Article IX

Consultation

The Contracting Parties shall at the request of either of them hold consultations on the matter of the interpretation or application of this Agreement.

Article X

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiations. If the dispute cannot be thus settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal.

2. The Arbitral Tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member of the Arbitral 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 Arbitral Tribunal. The members of the Arbitral Tribunal shall be appointed within two months of the request for arbitration from one of the Contracting Parties. The Chairman shall be appointed within three months from the date of appointment of the other two members.

3. If within the periods specified in paragraph 2 of this Article the necessary appointments have not been made and unless there is no other agreement, a request may be made by either Contracting Party to the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice President of the International Court of Justice shall be invited to make the appointments. If the Vice President of the International Court of Justice also happens to be a national of either Contracting Party or if he 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 appointments.

4. The Arbitral Tribunal shall reach its binding decision by a majority of votes. Each Contracting- Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman of the Arbitral Tribunal and the remaining costs shall be borne in equal parts by the Contracting Parties. The Arbitral Tribunal shall determine its own procedure concerning other matters.

Article XI

Application of Other Rules

If on the basis of an international agreement that is or will be binding upon the Czech Republic and the Russian Federation or on the basis of their legislation the treatment is accorded that is more favourable than that which is provided for in this Agreement, the more favourable treatment shall apply.

Article XII

Application of the Agreement

This Agreement shall apply to all investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party beginning from January 1, 1988.

Article XIII

Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the date of the second notification of the fulfilment of internal procedures required for the entry into force of this Agreement by the Contracting Parties.
2. This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from this date.

DONE in duplicate at Moscow, this 5th day of April, 1994, in the Czech and Russian languages, both texts being equally authoritative.

For the Government of the Czech Republic

Doc. Ing. Václav Klaus CSc.

Prime Minister

For the Government of the Russian Federation

Viktor Stěpanovič Černomyrdin

Prime Minister