Agreement

between the Czech Republic

and the Republic of India

for the Promotion and Protection of Investments

The Czech Republic and the Republic of India (hereinafter referred to as the „Contracting Parties");

Desiring to create conditions favourable for fostering greater investment by investors of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

(a) The term „investor" shall mean any natural or legal person who invests in the territory of the other Contracting Party.

(i) The term „natural person" shall mean any natural person having the nationality of a Contracting Party in accordance with its laws.

(ii) The term „legal person" shall mean, with respect to either Contracting Party, any entity including corporation, firm or association, incorporated or constituted in accordance with, and recognized as legal person by its laws, having its permanent seat in the territory of one of the Contracting Parties.

(b) „Investment" means every kind of asset established or acquired in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other similar forms of participation in a company;

(iii) rights to money or to any performance under contract having a financial value associated with an investment;

(iv) intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;

(v) rights under business concessions and licenses conferred by law, including concessions to search for and extract oil and other minerals.

(c) „Returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees.

(d) „Territory" means:

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

(ii) in respect of India: the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nations Convention on the Law of the Sea and International Law.

Article 2

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws and relevant framework laid down by its Government.

(2) Investments and returns of investors of each 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 Treatment and Most Favoured Nation Treatment

(1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management , maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investment of investors of any third State.

(2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

(3) The provisions of paragraphs 1 and 2 above 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 customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party;

(b) any matter pertaining wholly or mainly to taxation.

Article 4

Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as „expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable in a freely convertible currency.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that 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. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) 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, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to ensure fair and equitable compensation to such investors in respect of their investment.

Article 5

Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances or other similar events 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, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable in a freely convertible currency.

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

(a) requisitioning of their property by the forces or authorities of the latter Contracting Party,

or

(b) destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in a freely convertible currency without delay.

Article 6

Repatriation of Investment and Returns

(1) Each Contracting Party shall ensure that all funds of an investor of the other Contracting Party related to an investment and returns in its territory be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:

(a) capital and additional capital amounts used to maintain and increase investments;

(b) net operating profits including dividends and interest in proportion to their share-holding, royalties and any other returns;

(c) repayments of any loan, including interest thereon, relating to the investment;

(d) proceeds received by investors in case of sale or partial sale or liquidation of the investment;

(e) the earnings of nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

(2) Nothing in paragraph 1 of this Article shall affect the transfer of any compensation under Article 5 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph 1 of this Article shall be made in the currency of the original investment or any other freely convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

Article 7

Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

Article 8

Settlement of Disputes between an Investor and a Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) Any such dispute which has not been amicably settled within a period of six months from the written notification of the claim may be submitted for resolution:

in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, administrative or arbitral bodies whose final decision shall be binding;

or alternatively to one of the following procedures:

(a) to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law;

(b) to the International Centre for the Settlement of Investment Disputes if the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965;

(c) to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

(i) The appointing authority under Article 7 of these Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.

(ii) The parties shall appoint their respective arbitrators within two months.

(iii) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

(3) The arbitral award shall be final and binding.

Article 9

Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiations and consultations.

(2) If a dispute between Contracting Parties cannot thus be settled within six months from the time the dispute arose, 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 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 by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two 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 any 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 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 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 tribunal shall determine its own procedure.

Article 10

Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-nationals, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

Article 11

Applicable Laws

Except as otherwise provided in this Agreement, all investments shall be governed by the laws in force in the territory of the other Contracting Party in which such investment is made.

Article 12

Exceptions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party in cases of extreme emergency to take action in accordance with its laws applied in good faith, on a non-discriminatory basis, and only to the extent and duration necessary for the protection of its essential security interests, or for the prevention of diseases and pests in animals or plants.

Article 13

Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, admitted in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement.

The provisions of this Agreement shall not apply to any dispute, claim or divergence which arose before its entry into force.

Article 14

Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 15

Entry into Force

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

Article 16

Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph 1 of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorised thereto have signed this Agreement.

Done at Prague on this 14th day of October, 1996 in two originals each in the Hindi, Czech and English languages, all texts being equally authentic.

In case of any divergence, the English text shall prevail.

For the Czech Republic

For the Republic of India