

Bilateral Investment Treaty Agreement between the Czech Republic and China

Signed on December 8, 2005

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**AGREEMENT BETWEEN
THE CZECH REPUBLIC
AND THE PEOPLE'S REPUBLIC OF CHINA
ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Czech Republic and the People's Republic of China (hereinafter referred to as the Contracting Parties);

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

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic co-operation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

**ARTICLE 1
DEFINITIONS**

For the purpose of this Agreement,

1. The term „investment' means every kind of asset invested in connection with economic activities by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) movable and immovable property and other property rights such as mortgages, pledges and liens;

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

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

(d) intellectual property rights which mean trade-marks, patents, industry designs, technical processes, know-how, trade secrets, trade names and good-will associated with an investment;

(e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

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

2. The term „investor“ means,

(a) natural persons who have nationality of either Contracting Party in accordance with the laws of that Contracting Party;

(b) legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of either Contracting Party and have their seats in that Contracting Party whether they are profitable or non-profitable and whether their liability is limited or not.

3. The term „return“ means the amounts yielded by investments, including profits, dividends, interests, capital gains, royalties and fees.

4. The term „territory“ shall mean:

(a) in respect of the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law;

(b) in respect of the People's Republic of China, the territory of the People's Republic of China (including the territorial sea and air space above it) as well as any area beyond its territorial sea with which the People's Republic of China has sovereign rights of exploration and exploitation of resources of the seabed and its sub-soil and superjacent water resources in accordance with Chinese law 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 shall admit such investments in accordance with its laws and regulations.

2. Investments of the 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-FAVOURABLE-NATION TREATMENT

1. Each Contracting Party shall in its territory accord to 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. In respect of the People's Republic of China, paragraphs 1 and 2 of this Article do not apply to:

- (a) any existing non-conforming measures maintained within its territory;
- (b) the continuation of any non-conforming measure referred to in subparagraph a);
- (c) an amendment to any non-conforming measure referred to in subparagraph a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

The People's Republic of China will take all appropriate steps in order to progressively remove the non-conforming measures.

4. The National Treatment and Most-Favoured-Nation Treatment provisions of this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic, or monetary union, a common market or a free trade area.

5. The Contracting Party understands the obligations of the other Contracting Party

as a member of a customs, economic, or monetary union, a common market or a free trade area to include obligations arising out of an international agreement of that customs, economic, or monetary union, common market or free trade area.

6. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

7. The Most-Favoured-Nation Treatment provisions of this Article shall not apply to advantages accorded by virtue of any arrangement for facilitating small scale frontier trade in border areas.

ARTICLE 4 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:

(a) under domestic due process of law;

(b) on a non-discriminatory basis;

(c) against compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a prevailing commercial rate until the date of payment, shall be made without undue delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have right 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 this Article.

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 guarantee reasonable compensation to such investors in respect of their investment of the Contracting Party who are owners of those shares.

ARTICLE 5 COMPENSATION FOR DAMAGES AND LOSSES

1. Where investments by investors of either Contracting Party suffer 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 settlements, not less favourable than that which the latter Contracting Party accords to the investors of any third State.

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 damage or loss in the territory of the other Contracting Party resulting from:

- (a) requisitioning of their property by its forces or authorities,
 - (b) destruction of their 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 fair and appropriate compensation for the damage or loss sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely convertible currency and freely transferable without undue delay.

ARTICLE 6 TRANSFERS

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without undue delay. Such transfers shall include in particular, though not exclusively:

- (a) capital and additional amounts to maintain or increase the investment;
- (b) profits, interest, 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) the earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

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

3. Transfers shall be considered to have been made „without undue delay“ in the sense of paragraph(1) of this Article when they have been made within the period normally necessary for the completion of the transfer.

4. With regard to the People's Republic of China, the transfers referred to in Article 6 of this Agreement shall comply with relevant formalities stipulated by the present Chinese laws and regulations relating to exchange control. These formalities shall not be used as a way of avoiding the Contracting Party's commitments or obligations under this Agreement.

5. With regard to the Czech Republic, the transfers referred to in Article 6 of this Agreement shall comply with measures adopted by the European Community.

ARTICLE 7 SUBROGATION

1. If one Contracting Party or its designated agency makes a payment to its own investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made 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 the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to 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 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 DISPUTES BETWEEN CONTRACTING PARTIES

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within three months from the date of their appointment, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within five months from the date of the receipt of the written notice requesting for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the applicable principles of international law.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

ARTICLE 9
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 in the territory of that other Contracting Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within six months of the date when the request for the settlement has been submitted, the investor shall be entitled to submit the case, at his choice, for settlement to:

(a) the competent court of the Contracting Party which is the party to the dispute;

or

(b) 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,

or

(c) an ad hoc arbitral tribunal, unless otherwise agreed upon by the parties to the dispute, to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. With respect to the possibilities of submission of a dispute to the international arbitrations set forth under this Article, the People's Republic of China will require the investor concerned to go through the domestic administrative review procedures specified by the laws and regulations of that Contracting Party before the submission of the dispute to the international arbitration. Such a procedure shall not exceed a period of three months.

4. Once the investor has submitted the dispute to international arbitration, that submission shall be definitive. If the investor has submitted the dispute to the competent court of the Contracting Party where the investment has been made, the investor may withdraw his claim according to the laws and regulations of that Contracting Party, and submit the dispute to international arbitration as described in this Article. This submission to an arbitration after the withdrawal from the national court shall be definitive.

5. The arbitral tribunal shall decide on the basis of the law, taking into account:

- the law in force of the Contracting Party concerned;
- the provisions of this Agreement, and other relevant Agreements between the Contracting Parties;
- the provisions of special contracts relating to the investment concluded between the Contracting Party and the investor of the other Contracting Party;
- the general principles of international law.

6. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

ARTICLE 10
APPLICATION OF OTHER RULES AND SPECIAL COMMITMENTS

1. If the provisions of international agreements to which both Contracting Parties are parties, existing at present or established hereafter between the Contracting Parties in addition to the present Agreement, contain a regulation, 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 regulation shall, to the extent that it is more favourable, prevail over the present Agreement.
2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its legislation or the provisions of special contracts concluded between the said Contracting Party and investors of the other Contracting Party is more favourable than that accorded by the Agreement, the more favourable treatment shall be accorded.

ARTICLE 11
APPLICATION OF THIS AGREEMENT

The provisions of this Agreement shall apply to investments made after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement comes into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

ARTICLE 12
CONSULTATIONS

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning interpretation, application and implementation of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

ARTICLE 13
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary therefore have been fulfilled.
2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

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 such date of termination.

4. Between the Czech Republic and the People's Republic of China, this Agreement shall, from the date of entry into force, replace the Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments, signed on December 4th, 1991 in Beijing.

5. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of the present Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE in duplicate at Prague , on December 8, 2005, in the Czech, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Czech Republic
Deputy Prime Minister
and Minister of Finance
Bohuslav Sobotka

For the People's Republic of China
Deputy Minister of Trade
Yu Guangzhou