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Příloha č. 1

Draft Statutes of the Arbitral Tribunal for Foreign Investment and the Foreign Investment Court (1948)

Article 37

For the purposes of the Convention:

- a) "Nationals" in relation to a Party includes (i) companies which, under the municipal law of that Party, are considered national companies of that Party and (ii) companies in which nationals of that Party have directly or indirectly a controlling interest. "Companies" includes both juridical persons recognized as such by the law of a Party and associations even if they do not possess legal personality.
- b) "Property" includes all property, rights and interests, whether held directly or indirectly. A member of a company shall be deemed to have an interest in the property of the company.

Příloha č. 2

International Code of Fair Treatment for Foreign Investment (1949)

Article 2

By the terms of this Treaty the High Contracting Parties agree to apply fair treatment, as hereinafter defined, to investments of any kind made in their territories by the nationals of the other High Contracting Parties, including inter alia the following types:

- direct investments in real property, natural resources, commercial, financial, agricultural, industrial or transport enterprises, as well as in public utilities or enterprises connected therewith;
- equity investments in company shares and similar holdings;
- credits and advances to private and public borrowers and fixed-interest investments in private and public loans.

Příloha č. 3

Draft Convention on Investments Abroad (1959)

Article IX

For the purposes of this Convention,

- a) "nationals" in relation to a Party includes (i) companies which under the municipal law of that Party are considered national companies of that Party and (ii) companies in which nationals of that Party have directly or indirectly a controlling interest. "Companies" includes both juridical persons recognised as such by the law of a Party and associations even if they do not possess legal personality.
- b) "property" includes all property, rights, and interests, whether held directly or indirectly. A member of a company shall be deemed to have an interest in the property of the company.

Příloha č. 4

Convention on the Protection of Foreign Property (1967)

Article 9

For the purposes of this Convention:

- a) "National" includes both natural persons and companies. It does not, however, include nationals of a Party who belong to any territory to which this Convention may be extended pursuant to Article 11 but has not been so extended.
- b) "Company" means any entity which, under the law of a Party, either is recognized as a legal person or, as an entity or through its members, has the capacity to dispose of property or to institute legal proceedings.
- c) "Property" means all property, rights and interests, whether held directly or indirectly, including the interest which a member of a company is deemed to have in the property of the company. However, no claim shall be made under this Convention in respect of the interest of a member of a company:
 - i. i) if the company is a national of a Party other than the Party which has taken the measures affecting the property of the company; or
 - ii. ii) in the case of a company which is a national of a Party by whose measures its property is affected, if the interest of the member of the company does not arise out of and, at the time of such measures, does not represent either an investment of foreign funds made by him or his predecessor in title or an investment of compensation or damages paid in accordance with the provisions of this Convention.

Příloha č. 5

Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments (1959)¹

Article 8

(1) (a) The term "investment" shall comprise capital brought into the territory of the other Party for investment in various forms in the shape of assets such as foreign exchange, goods, property rights, patents and technical knowledge. The term "investment" shall also include the returns derived from and ploughed back into such "investment".

(b) Any partnerships, companies or assets of similar kind, created by the utilisation of the above mentioned assets shall be regarded as "investment".

¹ Dostupný z WWW: <http://www.iisd.org/pdf/2006/investment_pakistan_germany.pdf>

Příloha č. 6

Energy Charter Treaty (1994)

Article 1

(6) “Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- d) Intellectual Property;
- e) Returns;
- f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.

“Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

Příloha č. 7

North American Free Trade Agreement (1992)²

Article 1139

investment means:

- (a) an enterprise;
- (b) an equity security of an enterprise;
- (c) a debt security of an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise;
- (d) a loan to an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under
 - (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

² Dostupný z WWW:< <http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpiID=ALL>>

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

Příloha č. 8

Multilateral Agreement on Investment (1998)

2. Investment means:

Every kind of asset owned or controlled, directly or indirectly, by an investor, including:

- i. an enterprise (being a legal person or any other entity constituted or organised under the applicable law of the Contracting Party, whether or not for profit, and whether private or government owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association or organisation);
- ii. shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- iii. bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- v. claims to money and claims to performance;
- vi. intellectual property rights;
- vii. rights conferred pursuant to law or contract such as concessions, licenses, authorisations, and permits;
- viii. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Příloha č. 9

ASEAN Comprehensive Investment Agreement (2009)³

Article 4

(c) “investment”⁴ means every kind of asset, owned or controlled, by an investor, including but not limited to the following:

- i. movable and immovable property and other property rights such as mortgages, liens or pledges;
- ii. shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights or interest derived therefrom;
- iii. intellectual property rights which are conferred pursuant to the laws and regulations of each Member State;
- iv. claims to money or to any contractual performance related to a business and having financial value⁵;
- v. rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and
- vi. business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search, cultivate, extract or exploit natural resources.

The term “investment” also includes amounts yielded by investments, in particular, profits, interest, capital gains, dividend, royalties and fees. Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment;

³ Dostupný z WWW:

<[http://www.asean.org/images/2012/Economic/AIA/Agreement/ASEAN%20Comprehensive%20Investment%20Agreement%20\(ACIA\)%202012.pdf](http://www.asean.org/images/2012/Economic/AIA/Agreement/ASEAN%20Comprehensive%20Investment%20Agreement%20(ACIA)%202012.pdf)>

⁴ Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

⁵ For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

Příloha č. 10

US Model BIT (2012)⁶

Article 1

“investment” means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- a) an enterprise;
- b) shares, stock, and other forms of equity participation in an enterprise;
- c) bonds, debentures, other debt instruments, and loans;⁷
- d) futures, options, and other derivatives;
- e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- f) intellectual property rights;
- g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;⁸ and
- h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

⁶ Dostupný z WWW:

<<http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>>

⁷ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

⁸ Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

⁹ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

Příloha č. 11

Norway Draft Model BIT (2007)¹⁰

Article 2

2. "Investment" means:

Every kind of asset owned or controlled, directly or indirectly, by an investor of a Party, including, but not limited to:

- i. any entity established in accordance with, and recognised as a legal person by the law of a Party, whether or not their activities are directed at profit;
- ii. shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- iii. bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing;
- v. contracts;
- vi. claims to money and claims to performance;
- vii. intellectual property rights;
- viii. rights conferred pursuant to law or contract such as concessions, licenses, authorisations, and permits;
- ix. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges

In order to qualify as an investment under this Agreement, an asset must have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

¹⁰ Dostupný z WWW: <<http://www.italaw.com/sites/default/files/archive/ita1031.pdf>>