



Ministry of Finance
CZECH REPUBLIC

Czech Experience with Investor-State Arbitration and Its Evolving Investment Treaty Policy

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General information

- **Over 90 bilateral investment agreements in force**
- **23 amending protocols**
- **1 multilateral agreement (Energy Charter Treaty)**
- **More than 27 investment disputes**



BITs in 1990s

- **First BIT signed in 1989 with Belgium – Luxembourg Economic Union**
- **BITs concluded primarily with developed countries**
- **Main aim to attract foreign investors**



Investment arbitrations

- **First investment arbitration initiated in 1999**
- **Mainly under BITs concluded in 1990s**
- **The most frequent BITs - BITs with EU countries**



Current negotiations of BITs

- **New BITs**
 - Concluded with developing countries to protect Czech investors
 - More than 30 ongoing and over 10 new negotiations
- **Renegotiation of existing BITs**
 - Inconsistency with EU law
 - 31 BITs to be renegotiated



New Czech model BIT

- **Precise definition of investment**
 - The criteria of the Salini test
 - Every kind of asset invested directly
- **Precise definition of investor**
 - Dual citizenship (Natural Person)
 - Substantive business operations of company (Juridical Person)



New Czech model BIT

- **Denial of Benefits**
 - Investors who has not owned or controlled the investment at the time of the alleged breach of an obligation under BIT
- **Right to regulate**
 - Measures necessary to pursue legitimate public policy objectives, such as social, environmental, security, cultural diversity, public health and safety
- **Expropriation**
 - Definition of indirect expropriation



New Czech model BIT

- **Transfers**
 - Restriction of transfers in case of a balance-of-payments difficulty
- **Investor-State Dispute Settlement**
 - Time limits
 - Rules on cost allocation
 - Normative sources which the tribunal shall apply
 - Rules on third party funding
 - Costs deposit



Thank you for your attention!

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