

IN THE MATTER OF AN EXPERT DETERMINATION  
VALUATION OF THE INVESTIČNÍ A POŠTOVNÍ BANKA GROUP  
PURSUANT TO THE SETTLEMENT AGREEMENT BETWEEN

SALUKA INVESTMENTS B.V., NOMURA PRINCIPAL INVESTMENTS PLC, NOMURA  
INTERNATIONAL PLC, AND NOMURA HOLDINGS INC

AND

THE CZECH REPUBLIC

*Before*

Maitre L. Yves Fortier CC QC  
Prof. Dr. Peter Behrens

*Representing the Nomura Parties*

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## Introduction

1. This Expert Determination arises out of the following events.
2. By a Notice of Arbitration dated 18 July 2001 Saluka Investments B.V. ("Saluka") initiated arbitration proceedings against the Czech Republic under Article 8 of the "Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of The Netherlands and the Czech and Slovak Federal Republic, signed on 29 April 1991", and an arbitral tribunal was established in accordance with the UNCITRAL Arbitration Rules 1976. On 17 March 2006, a tribunal composed of Sir Arthur Watts KCMG QC (Chairman), Maître I. Yves Fortier CC QC, and Prof. Dr. Peter Behrens ("the Tribunal") issued a Partial Award.
3. By letter of 5 December 2006, a joint letter was sent to the Tribunal on behalf of Saluka, Nomura Principal Investments plc ("Nomura"), Nomura International plc, and Nomura Holdings Inc (collectively, the "Nomura Parties"), and the Czech Republic (with the Nomura Parties, "the Parties"), notifying the Tribunal that all proceedings between the Parties had been settled pursuant to the terms of the Parties' "Settlement Agreement". As a consequence, the Parties informed the Tribunal of their agreement to discontinue the aforementioned arbitration. The Parties further noted their agreement to submit the valuation of Investiční a Poštovní banka a.s. ("IPB") to final and binding resolution by way of expert determination (and not arbitration). The Parties requested that the Tribunal conduct the expert determination as a separate proceeding in accordance with the terms of reference set forth in Annex 9 of the Parties' Settlement Agreement (the "Terms of Reference") which provide:

*"Issue for determination. The Value of the entire IPB Group including, without limitation, all subsidiaries, Affiliates (as defined in the Settlement Agreement, but as though 'IPB' were substituted for the words 'any Party or KBC' Related Entity' in that definition and investments as of 16 June 2000 (the Value");*

*The Value shall be established in the following manner:*

1. *A balance sheet for IPB as at 31 December 1999 shall be prepared, reflecting full provisioning, and including state guarantees of IPB's assets sufficient that, after taking into account such provisioning and assuming a CZK 10 billion capital increase from existing IPB shareholders, IPB's capital adequacy would be comparable to that of KB and CS following their respective privatisations;*
2. *Starting from the balance sheet thus prepared, financial statements shall be forecast through 16 June 2000 assuming normal trading and, in particular, excluding extraordinary adverse developments in 2000, especially the bank runs of March and June;*
3. *Based on the financial statements thus prepared, and all appropriate contemporaneous information concerning the economy, the banking market and IPB, with the state aid and recapitalisation described above, the Value of IPB shall be assessed.*

*Procedure. The detailed procedure shall be established by the Tribunal or the Valuer, as the case may be, in consultation with the Parties, but shall include the following*

1. *A single round of submissions by the Parties:*
  - a) *Nomura's submission due 6 weeks after the acceptance by the BIT Tribunal of a mandate to conduct the Valuation or the appointment of the Valuer, as the case may be;*
  - b) *The Czech Republic's submission due 6 weeks after Nomura's submission.*
2. *2-Day hearing in London, as soon as possible but not less than 4 weeks after the Czech Republic's submission.*
3. *Post-hearing submissions to be exchanged simultaneously 2 weeks after the hearing.*
4. *The Tribunal or the Valuer, as the case may be, shall issue its decision not later than two months after the receipt of the post-hearing submissions. If the decision is not issued within two months after the hearing, the Nomura Parties may at their option extend the time for the rendering of the determination or terminate the determination and invite the International Centre for Expertise of the International*

*Chamber of Commerce to appoint a fresh Valuer to carry out a fresh determination.*

5. *The decision will state the amount of the Value and will not be accompanied by reasoning.*
6. *A copy of any communication between any party and the Tribunal or Valuer shall be provided simultaneously to the other party.*
7. *The fact that the reference is taking place, all documentation produced for the purposes of the reference, and the Tribunal or Valuer's determination shall be confidential save to the extent that disclosure may be required for the purposes of enforcement of the determination, or for the purposes of obtaining advice in connection with the reference or as otherwise required by law.*
8. *The Nomura Parties and the Czech Republic shall bear their own costs of the expert determination and will bear the costs and expenses of the determination in equal shares.*

*Settlement. These Terms of Reference are established pursuant to a Settlement Agreement between Nomura and the Czech Republic. This settlement is without prejudice to the determination of the Value, and the fact or terms of such settlement shall not be taken into consideration in such determination."*

4. By letter of 15 December 2006, the Tribunal agreed to conduct the expert determination of the value of the IPB Group in accordance with the Parties' Terms of Reference. The Tribunal proposed:

*"to conduct the Expert Determination by appointing a suitably qualified expert valuer to advise the Tribunal. The expert valuer's advice to the Tribunal would remain confidential to the Tribunal. The Tribunal would expect the expert valuer to attend the oral hearings and to have access to the written pleadings submitted by the Parties in the course of this valuation phase."*

The Tribunal also noted that it found the procedural arrangements set out in the Terms of Reference acceptable and requested a copy of, and more information about, the Parties' Settlement Agreement.

5. By letter of 21 December 2006, the Parties agreed to the Tribunal's proposal to appoint an expert valuer, but declined to communicate to the Tribunal a

copy of the entire Settlement Agreement on the grounds that this document was confidential.

6. The Nomura Parties filed their submission on 26 February 2007.
7. The Czech Republic filed its submission on 9 April 2007.
8. By letter of 18 June 2007, the Nomura Parties informed the Tribunal that an extract from the Settlement Agreement had been declassified by the Czech Republic and that the following provisions could be disclosed to the Tribunal:

*"The Value [as defined in the Terms of Reference] shall be subject to the following adjustment, to produce the 'Damages', provided that the Damages shall not be less than CZK 1:*

- (a) The Value shall be reduced by CZK 10 billion, representing a contribution by IPB's shareholders to the recapitalisation of IPB;*
- (b) The amount calculated in [sub-paragraph (a) above] shall be multiplied by 0.4616, representing Saluka's 46.16% shareholding in IPB;*
- (c) The amount calculated in [sub-paragraph (b) above] shall be reduced by CZK 8.4 billion, representing the proceeds from the sale by Saluka of its IPB shares to Nomura Europe; and*
- (d) To the amount calculated in [sub-paragraph (c) above] shall be applied an interest rate of 6 months PRIBOR compounded semi-annually from 16 June 2000 to the date the Value is determined.*

*If the Damages are greater than CZK 7 billion, the Czech Republic shall pay CZK 7 billion to the Nomura parties. If the Damages are less than CZK 7 billion, the Czech Republic shall pay the Damages to the Nomura Parties."*

9. By letter of 3 August 2007, the Tribunal informed the Parties of its proposed hearing schedule, noting that it would be for each Party to use the time allocated to it as it saw fit.
10. By letter of 23 August 2007, the Tribunal informed the Parties that the role of the expert valuer in the Expert Determination was envisaged as follows:

- “1. *Before the hearing*
  - a) the Expert will be given copies of the Tribunal’s Partial Award, the Terms of Reference appended to Mr. Turner’s letter of 5 December 2006 (‘Terms of Reference’), and the Parties’ submissions on valuation; and*
  - b) the Tribunal may arrange a meeting with the Expert in order to become acquainted and to discuss any possible problems which may arise;*
2. *At the hearing the Expert will be in attendance throughout, and will be able to ask questions with the permission of the Chairman;*
3. *The Tribunal may hold a meeting with the Expert immediately after the hearing in order to discuss any matters arising therefrom; and*
4. *The Expert will be given copies of the Parties’ post-hearing submissions, and thereafter the Expert will assist the Tribunal in making the decision foreseen in paragraph 5 of the Terms of Reference.”*

11. By letter of 2 October 2007 and emails of 12 and 15 October 2007, the Nomura Parties and the Czech Republic respectively indicated to the Tribunal that they had no objection to the appointment of Mr Andrew Robinson of Deloitte & Touche LLP as the Tribunal’s expert valuer.
12. By letter of 18 October 2007, the PCA informed the Parties that the Tribunal had decided to appoint Mr Andrew Robinson of Deloitte & Touche LLP as its expert valuer (the “Expert Valuer”), and the Parties’ submissions were subsequently provided to him.
13. Sadly, on 16 November 2007, Sir Arthur Watts KCMG QC, Chairman of the Tribunal, passed away.
14. By letter of 23 November 2007, the PCA communicated to the Parties the proposal of the two remaining members of the Tribunal that they should together continue to conduct the Expert Determination without appointing a

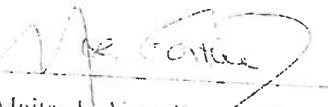
- new Chairman. The Nomura Parties agreed to this proposal by email of 23 November 2007. The Czech Republic agreed to this proposal by letter of 29 November 2007.
15. By letter of 14 January 2008, the PCA communicated the Expert Valuer's request for certain electronic models and analyses used by the Parties' experts.
  16. On 18 January 2008, the Czech Republic submitted the information requested in the PCA's letter of 14 January 2008.
  17. On 23 January 2008, the Nomura Parties submitted the information requested in the PCA's letter of 14 January 2008.
  18. The Tribunal met with the Expert Valuer in London on 25 January 2008 and signed an Engagement Letter regarding the services and conditions of service of the Expert Valuer. The Engagement Letter was sent to the Parties for their signature by the PCA on 28 January 2008, and was signed by the Nomura Parties on 31 January 2008, and by the Czech Republic on 1 February 2008.
  19. By letter of 4 February 2008, the PCA transmitted questions from the Tribunal to the Parties concerning the valuation of the IPB Group.
  20. On 25 February 2008, the Parties submitted responses to the Tribunal's letter of 4 February 2008.
  21. By letter of 7 March 2008, the PCA circulated further questions from the Tribunal to the Parties concerning the valuation of the IPB Group.
  22. The Parties submitted responses to the Tribunal's further questions on 20 March 2008.

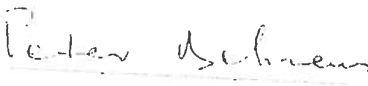
23. On 31 March and 1 April 2008, the Tribunal held hearings with the representatives of the Parties at the International Dispute Resolution Center in London.
24. On 3 April 2008, the PCA sent to the Parties a further question from the Tribunal directed to the Czech Republic, and asked the Czech Republic to respond to it in its post-hearing submission.
25. On 15 April 2008, two weeks after the hearing, post-hearing submissions were exchanged simultaneously in accordance with the Terms of Reference.

**Expert Determination of the Value of the IPB Group by the Tribunal**

26. In accordance with Paragraphs 4 and 5 under the heading "Procedure" in the Terms of Reference, which provide in relevant parts: "*The Tribunal [...] shall issue its decision not later than two months after the receipt of the post-hearing submissions*" and "*[t]he Decision will state the amount of the Value and will not be accompanied by reasoning*", the Tribunal hereby determines that the value of the entire IPB Group, as defined in the Terms of Reference, amounts to: Kč 34,200,000,000 (thirty-four billion two hundred million Czech crowns).

Dated: 6 June 2008

  
Maitre L. Yves Fortier CC QC

  
Prof. Dr. Peter Behrens