

The Government of the Republic of China (Taiwan) and the Government of Saint Vincent and The Grenadines, hereinafter referred to as the "Contracting Parties";

DESIRING to intensify economic co-operation between both States,

INTENDING to create favourable conditions for investments by nationals and enterprises of either States in the territory of the other State;

RECOGNIZING that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative, private sector growth and development and to the strengthening of economic cooperation and prosperity between both nations;

Have agreed as follows:

## **Article I. Definitions**

For the purpose of this Agreement:

1. The term "investment" shall comprise every kind of asset owned or controlled either directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:

(a) Movable and immovable property as well as any other property rights in rem, such as mortgages, liens and pledges;

(b) Shares of companies, stock, bonds and debentures or any other forms of equity participation in a company, business enterprise or joint venture;

(c) Claims to money which has been used to create an economic value or. claims to any performance having an economic value;

(d) Copyrights, industrial and intellectual property rights, technical processes, trade-marks, trade-names, know-how and good-will;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources but not real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

Any change in the form of an investment shall not affect its character as an investment.

2. The term "investor" in the case of Saint Vincent and The Grenadines shall mean

(a) Any natural person possessing the citizenship of Saint Vincent and The Grenadines in accordance with its laws; or

(b) Any enterprise that is owned or controlled by citizens of Saint Vincent and The Grenadines and incorporated or duly constituted in accordance with applicable laws of Saint Vincent and The Grenadines, and who makes the investment in the territory of the Republic of China (Taiwan) and who does not possess the citizenship of the Republic of China (Taiwan);

And in the case of the Republic of China (Taiwan);

(a) Any natural person who is a national of the Republic of China (Taiwan) as defined under its law; or

(b) Any enterprise that is owned or controlled by citizens of the Republic of China (Taiwan) and incorporated or duly constituted in accordance with applicable laws of the Republic of China (Taiwan), and who makes the investment in the territory of Saint Vincent and The Grenadines and who does not possess the citizenship of Saint Vincent and The Grenadines;

3. "enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint

venture or other association; and a branch of an enterprise;

4. "existing measure" means a measure existing at the time this Agreement enters into force;

5. "financial service" means any service of financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

6. "intellectual property rights" means copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights, as included in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights or the TRIPS Agreement;

7. "measure" includes any law, regulation, procedure, requirement, or practice;

8. "returns" means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income;

9. "state enterprise" means an enterprise that is governmentally-owned or controlled through ownership interests by a government;

10. "territory" means

(a) In respect of Saint Vincent and The Grenadines, the territory of Saint Vincent and The Grenadines, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Saint Vincent and The Grenadines exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;

(b) In respect of the Republic of China (Taiwan), the territory of Republic of China (Taiwan), as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which the Republic of China (Taiwan) exercises, in accordance with international law and its law, sovereign rights for the purpose of exploration, exploitation and preservation of the natural resources.

## **Article II. Establishment, Acquisition and Protection of Investment**

1. Each Contracting Party shall encourage and promote, as far as possible, the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory, in accordance with its legislation.

2. Each Contracting Party shall accord investments or returns of investors of the other Contracting Party:

(a) Fair and equitable treatment, and

(b) Full protection and security, in accordance with the principles of customary international law.

3. Each Contracting Party shall permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:

(a) Its own investors or prospective investors; or

(b) Investors or prospective investors of any third state.

4. Decisions by either Contracting Party not to permit an acquisition shall not be subject to the provisions of arbitration of this Agreement.

5. Decisions by either Contracting Party not to permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors shall not be subject to the provisions of Article XI of this Agreement.

## **Article III. Most-favoured-nation (mfn) Treatment after Establishment and Exceptions to Mfn**

1. Each Contracting Party shall accord to investments, or returns of investors of the other Contracting Party, treatment no less favourable than that which it accords to investments or returns of investors in its own territory or to investments or returns of investors of any third State, except otherwise provided for in its legislation.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which it accords its own investors or investors of any third State.

3. The treatments in paragraphs 1 and 2 of this Article shall not extend to privileges which either Contracting Party accords to investors of third States by virtue of membership in, or pursuant to any bilateral or multilateral agreement in force or signed prior to the date or after the date of entry into force of this Agreement.

## **Article IV. Other Measures**

1. A Contracting Party may not require that an enterprise of that Contracting Party that is an investment under this Agreement appoint to senior management positions individuals of any particular nationality.

2. A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

3. Except matters related to government procurement, subsidies, research and development, locating production, grants, insurance, guarantees, and loan provided or supported by each Contracting Party, neither Contracting Party may impose any of the following requirements in connection with permitting the establishment or acquisition of an investment or enforce any of the following requirements in connection with the subsequent regulation of that investment:

(a) To export a given level or percentage of goods;

(b) To achieve a given level or percentage of domestic content;

(c) To purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) To relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(e) To transfer technology, a production process or other proprietary knowledge to a person in its territory unaffiliated with the transferor, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, either to remedy an alleged violation of competition laws or acting in a manner not inconsistent with other provisions of this Agreement.

4. Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall grant temporary entry to citizens of the other Contracting Party employed by an enterprise who seek to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial or executive.

## **Article V. Compensation for Losses**

Investors of one Contracting Party who suffer losses because their investments or returns on the territory of the other Contracting Party are affected by an armed conflict, a national emergency or a natural disaster on that territory, shall be accorded by such latter Contracting Party, in respect of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State.

## **Article VI. Expropriation**

1. Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the fair market value of the investment or returns expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier. The compensation shall be paid without delay and shall carry the usual commercial rate until the time of payment from the date of expropriation with interest at a normal commercial rate; and shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization, or comparable measure for the determination and payment of such compensation.

2. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt

review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment or returns in accordance with the principles set out in this Article.

## **Article VII. Transfer**

1. Each Contracting Party shall permit in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfers of their investments and returns.

2. Without limiting the generality of the foregoing, each Contracting Party shall also guarantee to the investor the unrestricted transfer of:

(a) Funds in repayment of loans related to an investment;

(b) The proceeds of the total or partial liquidation of any investment;

(c) Wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in the territory of the other Contracting Party; and

(d) Any compensation owed to an investor by virtue of Articles V or VI of the Agreement.

3. Transfers shall be permitted by each Contracting Party in its territory without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange prevailing at the time of transfer.

4. Notwithstanding paragraphs 2 and 3, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) Bankruptcy, insolvency or the protection of the rights of creditors;

(b) Issuing, trading or dealing in securities; .

(c) Criminal or penal offenses;

(d) Reports of transfers of currency or other monetary instruments; or

(e) Ensuring the satisfaction of judgments in judicial or administrative proceedings.

5. Neither Contracting Party may require its investors to transfer, or penalize its investors that fail to transfer, the returns attributable to investments in the territory of the other Contracting Party,

6. Paragraph 5 shall not be construed to prevent a Contracting Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in the subparagraphs of paragraph 4.

## **Article VIII. Subrogation**

1. If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Any payments received in non-convertible currency by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

## **Article IX. Investment In Financial Services**

Nothing in this Agreement shall be construed to preclude a Contracting Party from adopting or maintaining measures relating to financial services it considers necessary for prudential reasons.

## **Article X. Taxation Measures**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention or agreement. In the event of any inconsistency between the provisions of this Agreement and any tax convention or agreement, the provisions of that convention or agreement shall prevail.
3. Article VI may be applied to a taxation measure unless the taxation authorities of the Contracting Parties, no later than six months after being notified by an investor who disputes a taxation measure, jointly determine that the measure is not an expropriation.
4. If the taxation authorities of the Contracting Parties fail to reach the joint determinations specified in paragraph (3) within six months after being notified, the investor may submit its claim for resolution under Article XI.

## **Article XI. Settlement of Disputes between an Investor and the Host Contracting Party**

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that the former Contracting Party has breached the obligation under this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach, shall, to the extent possible, be settled amicably between them.
2. If a dispute has not been settled amicably within a period of six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with Article XII. For the purposes of this paragraph, a dispute is considered to be initiated when the investor of one Contracting Party has delivered notice in writing to the other Contracting Party alleging that the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
3. An investor may submit a dispute as referred to in paragraph (1) to arbitration only if:
  - (a) Both the investor and the Contracting Party in dispute have consented in writing thereto;
  - (b) The investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind; and
  - (c) Not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

## **Article XII. Reference to International Centre for Settlement of Investment Disputes**

1. The dispute may, at the election of the investor concerned, be submitted to arbitration under: The International Centre for the Settlement of Investment Disputes (herein after referred to as "the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March, 1965 (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; the ICSID Additional Facility Rules, provided that either the Contracting Party to the dispute or the other Contracting Party is a party to the ICSID Convention; the UNCITRAL Arbitration Rules; or any other arbitration institution or under any other arbitration rules, if agreed by the investor and the Contracting Party to the dispute.
2. The Contracting Party which is a party to the dispute shall not raise an objection at any stage of the proceedings or enforcement of an award the fact that the investor enterprise which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of its losses.
3. Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless: (a) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or (b) the other Contracting Party should fail to abide by or comply with any award rendered by an arbitral tribunal.

## **Article XIII. Consultations and Exchange of Information**

Either Contracting Party may request consultations on the Interpretation or application of this Agreement. The other contracting Party shall give sympathetic consideration to the request. Upon request by either Contracting Party, information shall be exchanged on the measures of the other Contracting Party that may have an impact on new investments, investments or returns covered by this Agreement.

## **Article XIV. Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.
2. If a dispute cannot be settled through consultations, it shall, at the request of both Contracting Parties, be submitted to an arbitral panel for decision. In the absence of an agreement by the Contracting Parties to the contrary, the UNCITRAL Arbitration Rules should govern, except as modified by both Contracting Parties.
3. An arbitral panel shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral panel. The two members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral panel. The chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.
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 the necessary appointments. If the President is a national of either Contracting Party or 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 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 panel shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chairman in accordance with paragraph (3) or (4) of this Article.
6. Each Contracting Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral panel 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.
7. The Contracting Parties shall, within 60 days of the decision of a panel, reach agreement on the manner in which to resolve their dispute. Such agreement shall, normally implement the decision of the panel. If the Contracting Parties fail to reach agreement, the Contracting Party in whose favour the decision was made shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the panel.

## **Article XV. Transparency**

Each Contracting Party shall, to the extent practicable, ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner, as to enable interested persons and the other Contracting Party to become acquainted with them.

## **Article XVI. Application and General Exceptions**

1. This Agreement shall apply to investment made by an investor of one Contracting Party and approved by the other Contracting Party in the latter's territory before or after the entry into force of this Agreement.
2. If the provision 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.

3. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner in compliance with its essential security and sensitive to environmental concerns.

4. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:

(a) Necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) Necessary to protect human, animal, or plant life or health; or

(c) Relating to the conservation of living or non-living exhaustible natural resources.

## **Article XVII. Entry Into Force**

Each Contracting Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications.

## **Article XVIII. Duration and Termination**

This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, its provisions shall continue in effect with respect to such investments or commitments to invest for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in Kingstown, on the Seventeenth Day of the twelfth month of the ninety eighty year of the Republic of China (Taiwan), which is equivalent to the seventeenth day of the twelfth. month of the year two thousand and ninth in the Gregorian calendar, in duplicate in the Chinese and English languages, which both versions being equally valid.

For the government of the Republic of China (Taiwan) For the government of St. Vincent and the Grenadines

H. E. Leo Lee Ambassador to St. Vincent and the Grenadines The Hon Sir Louis Straker

Deputy Prime Minister St. Vincent and the Grenadines