

AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE SOCIALIST REPUBLIC OF VIETNAM ON PROMOTION AND PROTECTION OF INVESTMENT

THE REPUBLIC OF AUSTRIA AND THE SOCIALIST REPUBLIC OF VIETNAM;

Hereinafter referred to as "Contracting Parties",

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties;

RECOGNIZING that the promotion and protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations between the Contracting Parties,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement

(1) The term "investment" comprises all assets and in particular, though not exclusively:

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

b) Shares and other types of participations in undertakings;

c) Claims to money that has been given in order to create an economic value or claims to any performance having an economic value;

d) Copyrights, industrial property rights such as patents for inventions, trademarks, industrial designs and utility models, technical processes, know-how, trade names and goodwill;

e) Business concessions under public law to search for or exploit natural resources.

(2) The term "investor" means

In respect of the Republic of Austria

a) Any natural person who is a citizen of the Republic of Austria and makes an investment in the other Contracting Party's territory;

b) Any juridical person, or partnership, constituted in accordance with the legislation of the Republic of Austria, having its seat in the territory of the Republic of Austria and making an investment in the other Contracting Party's territory;

c) Any juridical person, or partnership, constituted in accordance with the legislation of a Contracting Party or of a third Party in which the investor referred to in a) or b) exercises a dominant influence;

In respect of the Socialist Republic of Vietnam

a) Any person who is a citizen of the Socialist Republic of Vietnam in accordance with the legislation of the Socialist Republic of Vietnam;

b) Any juridical person, including companies, corporations, firms and associations incorporated or constituted in accordance with the legislation of the Socialist Republic of Vietnam and having its seat in the Socialist Republic of Vietnam;

(3) The term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, profits,

interests, capital gains, dividends, royalties, licence and other fees.

(4) The term "expropriation" also comprises a nationalization or any other measure having equivalent effect.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.

(2) Investments admitted according to Article 1 paragraph (1) and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) also for their returns in case of reinvestment of such returns, as well as for the legal extension, alteration or transformation of an investment.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded to investors of any third State and their investments.

(2) The provisions of paragraph (1) shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from

- a) Any customs union, common market, free trade area or membership in an economic community;
- b) Any international agreement, international arrangement or domestic legislation regarding taxation;
- c) Any regulation to facilitate the frontier traffic;
- d) National treatment granted to a third country in a bilateral investment agreement.

Article 4. Compensation

(1) Investments of investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose by due process of law and against compensation. Such compensation shall amount to the value of the investment immediately preceding the time in which the actual or impending measure became public knowledge. The compensation shall be paid without undue delay and shall carry the usual bank interest of the country in which the investment was made until the time of payment; it shall be paid in freely convertible currency and be freely transferable. Provisions for the determination of the payment of such compensation shall be made in an appropriate manner not later than at the moment of the expropriation.

(2) Where a Contracting Party expropriates the assets of a company which is considered as a company of this Contracting Party pursuant to paragraph (2) of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph (1) so as to ensure due compensation to this investor.

(3) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

(4) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed either by the competent authorities of the Contracting Party having induced the expropriation or by an international arbitral tribunal according to Article 8 of the present Agreement.

Article 5. Transfers

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of

- a) The capital and additional amounts for the maintenance or extension of the investment;
- b) Amounts assigned to cover expenses relating to the management of the investment;
- c) The returns;

- d) The repayment of loans;
- e) The proceeds from total or partial liquidation or sale of the investment;
- f) A compensation according to Article 4 paragraph (1) of the present Agreement.

(2) The payments referred to in this Article shall be effected at the exchange rates prevailing on the day of the transfer of payments in the territory of the Contracting Party from which the transfer is made.

(3) The rates of exchange shall be determined according to the quotations on the stock exchanges on the territory of each Contracting Party or in the absence of such quotations by the respective banking system in the territory of each of the Contracting Parties. The bank charges shall be fair and equitable.

Article 6. Subrogation

Where one Contracting Party or an institution authorized by it makes payments to its investor in virtue of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall without prejudice to the rights of the investor of the first Contracting Party under Article 8 of the present Agreement and to the rights of the first Contracting Party under Article 9 of the present Agreement recognize the assignment to the first Contracting Party of all rights and claims of this investor under a law or pursuant to a legal transaction. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such rights or claims which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Article 4 and Article 5 of the present Agreement shall apply *mutatis mutandis*.

Article 7. Other Obligations

(1) If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, 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 rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory.

Article 8. Settlement of Investment Disputes

(1) Any dispute arising out of an investment, between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If a dispute according to paragraph (1) cannot be settled within three months of the receipt of a written notification of sufficiently detailed claims, the dispute shall upon request of the Contracting Party or of the investor of the other Contracting Party be settled through arbitration by three arbitrators in accordance with the UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. The Contracting Party submits itself to the arbitral tribunal mentioned also in the case that no such agreement for arbitration exists

(3) The award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(4) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received in virtue of a guarantee indemnity in respect of all or some of its losses.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations.

(2) If a dispute according to paragraph (1) cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted *ad hoc* as follows: each Contracting Party shall appoint one member and these

two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph (3) are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 10. Application of the Agreement

This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its legislation by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

Article 11. Entry Into Force and Duration

(1) This Agreement is subject to ratification or approval in accordance with the Constitution of each Contracting Party and shall enter into force on the first day of the third month that follows the month during which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Article 1 to 10 of the present Agreement shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

DONE at Hanoi on the 27th of May 1995, in duplicate, in German, Vietnamese and English language. In the case of deviations, the English text is used.

For the Republic of Austria:

Mock m.p.

For the Socialist Republic of Vietnam:

Cam m.p.

With reference to the Agreement between the Republic of Austria and the Socialist Republic Vietnam to promote and protect investment, signed in Hanoi, the term "significant influence" in Article 1 (2), subparagraph (c), means that Austrian investor exercises with such significant control over the management of a legal entity or partnership, that no substantial decision on the investment or the strategy is possible without the consent of the Austrian investor.

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