

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA ON MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Socialist Republic of Vietnam and the Government of the Republic of Bulgaria, hereinafter referred to as "Contracting Parties",

Desiring to develop the economic cooperation between the two States,

Preoccupied to encouraging and creating favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

Conscious that the mutual promotion and protection of investments, in accordance with the present Agreement, stimulates the initiatives in this field,

HAVE AGREED AS FOLLOWS:

Article 1.

For the purposes of this Agreement:

1. The term "investments" shall mean, every kind of assets invested by an investor of the one Contracting Party in the territory of the other Contracting Party in one of the following forms:

- a) Property rights and any other real rights as well as real rights such as mortgages and pledges or other similar rights;
- b) Shares, stocks or other securities materialising participation in companies;
- c) Outstanding claims as well as any other rights having economic value;
- d) Copyrights and similar rights, rights in the field of industrial and intellectual property (such as patents, licences, industrial design, trademarks and trade names), technical processes, know-how and goodwill;
- e) Business concessions, conferred by law, under a contract or an administrative act of a competent state authority, and in particular for exploration, processing, extraction or exploitation of natural resources;

The investments should be made in accordance with the laws and regulations in the territory of the respective Contracting Party. A subsequent change of the form in which the investments have been made shall not affect their substance as investments, provided that such a change does not contradict the laws of the relevant Contracting Party in which territory the investments have been made. 2. The term "returns" shall comprise all amount yielded by the investments, such as profits, dividends, interest and other lawful income.

3. The term "investor" shall mean with regard to either Contracting Party:

- a) A natural person having the citizenship of the Contracting Party in accordance with its applicable legislation;
- b) Any company, organisation or association with or without juridical personality, incorporated or constituted in accordance with the legislation of the Contracting Party with a seat in its territory;

4. The term "territory" shall mean the territory under the sovereignty of the Socialist Republic of Vietnam, on the one hand, and of the Republic of Bulgaria, on the other hand, including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which the respective State exercise sovereign rights and jurisdiction in conformity with international law.

Article 2.

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.
2. In case of reinvestment of returns from the investments, these reinvestments and their returns shall enjoy the same protection as the initial investments.
3. Each Contracting Party shall consider favourably and in compliance with its laws and regulations questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of their families forming part of their household.

Article 3.

1. Neither Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party, treatment less favourable than that accorded to investments made by investors of any third State.
2. Neither Contracting Party shall accord to investors of the other Contracting Party as regards maintenance, use and management of their investments in its territory, treatment less favourable than that accorded to investors of any third State.
3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the privileges accorded to investors of a third State based on:
 - a) Participation in, or association with existing or future customs union or free trade area, economic communities or similar international institutions or,
 - b) Agreements on avoidance of double taxation.
4. In addition to the provisions of paragraphs 1 and 2 of this Article each Contracting Party shall accord, in compliance with its legislation, treatment to the investors of the other Contracting Party and their investments no less favourable than that accorded to its own investors and their investments.

Article 4.

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, state of emergency or other similar events shall be accorded treatment no less favourable than that accorded to investors of any third State.

Article 5.

1. Investments made by investors from one of the Contracting Parties in the territory of the other Contracting Party shall not be expropriated or nationalised except by virtue of law, in the public interest, on a non-discriminatory basis and against preliminary and adequate compensation.

The same conditions shall also apply for the transition of the investment to public property, positioning under public control, as well as any other deprivation or limitation of the property rights through sovereign measures which in their consequences are tantamount to expropriation. 2. The compensation shall amount to the market value of the investments concerned immediately before the date of the entry into force of the act of expropriation, shall be paid without delay and shall carry an annual rate of interest equal to 12 months LIBOR quoted for the currency in which the investments have been made until the time of payment. Any value reduction due to the fact that the impending expropriation has become public knowledge, shall not be taken into consideration when evaluating the amount of the compensation due. The payment of such compensation shall be freely transferable.

Article 6.

1. Each Contracting Party shall permit investors of the other Contracting Party, after the fulfilment of all their tax obligations, the free transfer of:
 - a) Capital and additional amounts intended to maintain or increase the investment;

- b) Returns from the investment;
 - c) Proceeds obtained from the sale or the total or partial liquidation of the investment;
 - d) The sums required for payment of the expenses which arise from the operation of the investment, such as: - Loan repayments,
 - Payment of patents or licence fees,
 - Payment of other expenses;
 - e) Compensation payable in accordance with Article 5;
 - f) Part of the remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.
2. The transfers referred to in the preceding paragraph shall be made without delay, at the exchange rate prevailing on the date of the transfer in the territory of the Contracting Party where the investment was made.
3. In accordance with the legislation of either Contracting Party all transfers subject to this Article shall be treated not less favourably than that accorded to the transfers of an investment made by an investor of any third State.

Article 7.

A Contracting Party having, by virtue of a guarantee given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors is, by virtue of subrogation, entitled to exercise the rights and actions as well as to assume the obligations of the said investor. The subrogation in the rights and obligations of the ensured investor extends also to the right of transfer of the payments mentioned in Article 6. The paying Contracting Party cannot obtain rights or assume obligations greater than those of the ensured investor.

Article 8.

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations between the Contracting Parties.
2. If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members. 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 in Hague to make the necessary appointments. If the President is a national of either Contracting Party or if he 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 if he too 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 tribunal reaches its decision on the basis of the provisions of the present Agreement, concluded between the Contracting Parties, as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

6. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9.

1. Disputes between an investor of one of the Contracting Parties and the other Contracting Party concerning obligations of the latter under this Agreement, in relation to an investment of the former, shall, as far as possible, be settled by the

disputing parties in an amicable way.

2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute:

a) To the competent court or arbitral tribunal of the Contracting Party, which is party to the dispute; or

b) In case of disputes with regard to Articles, 5 and 6 of this Agreement, the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to an ad hoc arbitral tribunal to be established under the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. The arbitral tribunal shall reach its decision on the basis of the national laws and regulations of the Contracting Party which is a party to the dispute, the provisions of the present Agreement, as well as the general principles of international law.

4. The decision of the arbitral tribunal shall be final and binding on the parties to the dispute and the Contracting Party shall execute the decision in accordance with its national legislation.

5. Each of the parties to the dispute shall bear the costs of its arbitrator and its representation in the arbitral proceedings and the costs of the Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 10.

Should national legislation of the Contracting Parties or present or future international agreements applicable between the Socialist Republic of Vietnam and the Republic of Bulgaria or other international agreements, to which they are parties, contain regulations, 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 regulations shall to the extent that is more favourable prevail over the present Agreement.

Article 11.

Each Contracting Party may suggest to the other Contracting Party to enter into consultation concerning all questions related to the implementation or interpretation of the present Agreement. The other Contracting Party shall make the necessary arrangements for holding these consultations.

Article 12.

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after its entry into force.

Article 13.

1. This Agreement is subject to ratification or approval in accordance with the constitution of each Contracting Party and shall enter into force thirty days after the receipt of the notification with which the two Contracting Parties notify each other in writing that the respective constitutional requirements for the entry into force of this Agreement have been fulfilled, shall remain in force for a period of ten(10) years and shall be renewed automatically for successive period of five(5) years unless either Contracting Party notifies in writing at least twelve(12) months prior to its expiry the other Contracting Party of its decision to terminate the Agreement.

2. With respect to investments made prior to the date when notice of denunciation of this Agreement is received by the other Contracting Party, the provisions of Articles 1 to 12 shall remain in force for a further period of ten(10) years from that date.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in Sophia on 19th September in two originals in Vietnam, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM:

FOR THE GOVERNMENT OF THE REPUBLIC OF BULGARIA: