

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

The Government of the Socialist Republic of Vietnam and the Government of the Republic of Singapore (each hereinafter referred to as a "Contracting Party").

Desiring to create favorable conditions for greater economic co-operation between them and in particular for investments by nationals and companies of one State in the territory of the other State based on the principles of equality and mutual benefit;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any:

(a) Movable and immovable property and other property rights such as mortgage, lien or pledge;

(b) Share, stock, debenture and similar interests in companies;

(c) Title to money or to any contract having an economic value;

(d) Copyright, industrial property rights (such as patents for inventions, trade marks industrial design), know-how, technical processes, trade names and goodwill; and

(e) Business concession conferred by law or under contract to search for, cultivate, extract or exploit natural resources.

2. The term "returns" means monetary returns yielded by an investment including any profit, interest, capital gain, dividend, royalty or fee.

3. The term "national" means:

(a) In respect of the Socialist Republic of Vietnam, a person who is a citizen of the Socialist Republic of Vietnam according to its laws;

(b) In respect of the Republic of Singapore, any citizen of the Republic of Singapore within the meaning of the Constitution of the Republic of Singapore.

4. The term "company" means:

(a) In respect of the Socialist Republic of Vietnam, a company or other juridical person incorporated or constituted in its territory in accordance with its laws;

(b) In respect of the Republic of Singapore, any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Republic of Singapore.

Article 2. Applicability of this Agreement

1. This Agreement shall only apply:

(a) In respect of investments in the territory of the Socialist Republic of Vietnam, to all investments made by nationals and companies of the Republic of Singapore which are specifically approved in writing by the competent authority designated by the Government of the Socialist Republic of Vietnam and upon such conditions, if any as it shall deem fit;

(b) In respect of the investments in the territory of the Republic of Singapore, to all investments made by nationals and companies of the Socialist Republic of Vietnam which are specifically approved in writing by the competent authority designated by the Government of the Republic of Singapore and upon such conditions, if any as it shall deem fit.

2. The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favorable conditions for nationals and companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

2. Investments approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. Most Favored Nation Provision

Neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and companies of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of nationals and companies of any third State.

Article 5. Exceptions

1. The provisions of this Agreement relating to the grant of treatment not less favorable than that accorded to the nationals and companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals and companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any arrangement for customs, monetary, tariff or trade matters (including a free trade area) or any agreement designed to lead in future to such an arrangement; or

(b) Any arrangement with a third State or State in the same geographical region designed to promote regional co-operation in the economic, social, labor, industrial or monetary fields within the framework of specific projects.

Article 6. Expropriation

1. Neither Contracting Party shall take any measure of expropriation, nationalization or other measure having effect equivalent to nationalization or expropriation against the investment of nationals or companies of the other Contracting Party unless the measures are taken for any purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and against payment of compensation which shall be effectively realizable and which shall be made without unreasonable delay. Such compensation shall, subject to the laws of each Contracting Party, be the value immediately before the expropriation, nationalization or measure having effect equivalent to nationalization or expropriation. The compensation shall be freely convertible and transferable.

2. Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee composition as specified therein to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 7. Compensation for Losses

Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification,

compensation or other settlement, if any, no less favorable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 8. Repatriation

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer, on a non-discriminatory basis, of their capital and the returns from any investments, including:

- (a) Profits, capital gain, dividends, royalties, interests and other current income accruing from any investments;
- (b) The proceeds of the total or partial liquidation of any investment;
- (c) Repayments made pursuant to a loan agreement in connection with investments;
- (d) License fees in relation to the matters in Article 1(1) (d);
- (e) Payments in respect of technical assistance, technical service and management fees;
- (f) Payments in connection with contracting projects;
- (g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party.

Article 9. Exchange Rate

The transfers referred to in Article 6 to 8 of this Agreement shall be effected at the prevailing market rate in freely convertible currency on the date of transfer. In the absence of such a market rate the official rate of exchange shall apply.

Article 10.

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 11. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action where such prohibitions, restrictions or actions are directed to:

- (a) The protection of its essential security interests;
- (b) The protection of public health; or
- (c) The prevention of diseases and pests in animals or plants.

Article 12. Subrogation

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own nationals and companies in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and companies. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and companies shall not affect the right of such nationals and companies to make their claims against the other Contracting Party in accordance with Article 13.

Article 13. Investment Disputes

1. Any dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give

notice to the other of its intentions.

2. If the dispute cannot be thus resolved as provided in paragraph (1) of this Article within six months from the date of the notice given thereunder, then the Contracting Party and the investor concerned shall refer the dispute to either conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation, 1980 or to arbitration in accordance with the United Nations Commission on International Trade Law Rules on Arbitration, 1976 subject to the following provisions:

(a) In respect of conciliation proceedings, there shall be two conciliators, one each appointed by the respective parties; and

(b) In respect of arbitration proceedings, the following shall apply: (i) The Arbitration Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman. The Governments of the parties to...two months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration after the lapse of the six months mentioned in paragraph (2) of this Article.

(ii) The Arbitration Award shall be made in accordance with the provisions of this Agreement, the relevant domestic laws including the rules on the conflict of laws of the territory of the Contracting Party in which the investment dispute arises as well as the generally recognized principles of international law.

(iii) If the necessary appointments are not made within the period specified in paragraph (2)

(b i) , either party may, in the absence of any other agreement, request the Secretary - General of the International Center for the Settlement of Investment Disputes to make the necessary appointments.

iv The Tribunal shall reach its decision by a majority of votes.(iv) The Tribunal shall reach its decision by a majority of votes.

(v) The decision of the Arbitration Tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.

(vi) The Arbitration Tribunal shall state the basis of its decision and state reasons upon the request of either party.

(vii) Each party concerned shall bear the costs of its won arbitrator and its representation in the arbitration proceedings. The cost of the Chairman in discharging his arbitration function and the remaining costs of the Tribunal shall be borne equally by the parties concerned. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

3. The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 14 where a dispute concerns the interpretation or application of this Agreement.

Article 14. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If any such dispute cannot be settled, it shall upon the request of either Contracting Party, be submitted to arbitration. The Arbitration Tribunal (hereinafter called "the Tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be the Chairman of the Tribunal, appointed by agreement of the Contracting Parties.

3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

4. If the Tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrator not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

5. The Tribunal shall reach its decision by a majority of votes.

6. The Tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award costs. The Tribunal may, however, in its decision direct that a higher proportion or costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

8. Apart from the above the Tribunal shall establish its own rules of procedure.

Article 15. Other Obligations

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investment by nationals of the other Contracting Party to treatment more favorable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party, its nationals or companies with nationals or companies of the other Contracting Party as regards to their investments.

Article 16. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day from the date of the notification of the later Contracting Party.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expire of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 15 shall remain in force for a further period of ten years from that date.

In Witness Whereof the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Singapore on 29th October 1992, in duplicate in the English and Vietnamese languages, both texts being equally authentic. Any divergence of interpretation between the two texts shall be resolved by reference to the English text.