

Agreement between the Government of the Republic of Lithuania and the Government of the Socialist Republic of Vietnam on the Promotion and Protection of Investments

The Government of the Republic of Lithuania and the Government of the Socialist Republic of Viet Nam, hereinafter referred to as the "Contracting Parties",

Desiring to extend and deepen their long-term economic and industrial cooperation and in particular to create favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to protect investments of investors of both parties and to stimulate the flow of capital and individual economic initiatives aimed at stimulating economic prosperity of both Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) The term "investment" means every kind of asset and in particular, though not exclusively:

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

ii) The stocks, shares and debentures of companies or interests in the property of such companies;

iii) Claims to money or to any right to performance having an economic value;

iv) Industrial and intellectual property rights including copyright or copyrights, patents, trademarks, trade names, know-how, industrial and commercial secrets, know-how and goodwill;

v) The trade concessions granted by law or under contract, including prospecting concessions to extract, culture, or exploit natural resources.

The term "investment" shall apply:

a) In respect of investments made in the territory of the Republic of Lithuania, any asset invested in accordance with the laws and regulations of the Republic of Lithuania; and

b) In respect of investments made in the territory of the Socialist Republic of Viet Nam, all investment projects that are approved by the Government of the Socialist Republic of Viet Nam in accordance with the laws and regulations in force;

Any alteration of the form in which assets are invested does not affect their status as investments provided that such change is not contrary to the laws and regulations of the Contracting Party in whose territory the investment has been made;

b) The term "returns" means the amounts reported by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties or fees.

The income derived from investments and reinvestment shall enjoy the same protection as the investment.

c) The term means investor in respect of either Contracting Party, means:

i) A natural person possessing the nationality or enjoying permanent residence in the territory of the other contracting party, in accordance with its laws; or

ii) A company, firm, a partnership, trust, a joint venture, organization, association or company registered or legally constituted under the laws and regulations of that Contracting Party;

iii) Any entity or organization constituted in accordance with the legislation of any third State which is controlled by nationals of that Contracting Party and having their headquarters in the territory of the Contracting Party concerned;

d) The term "territory" means:

i) With respect to the Republic of Lithuania, the territory of the Republic of Lithuania, including the territorial sea and maritime submarine or any area over which it may exercise, in accordance with international law, for the purpose of exploitation and exploration for and preservation of the seabed and subsoil and natural resources;

ii) With respect to the Socialist Republic of Vietnam, the total land area (including the islands and submarine areas over which the Socialist Republic of Viet Nam exercises, in accordance with national and international law, its sovereignty, its sovereign rights and jurisdiction;

e) The term "freely convertible currency" means any currency that is widely used to make payments for international transactions and is widely traded in international foreign exchange markets.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party, create favourable conditions for that purpose and shall accept such investments in accordance with its laws and regulations.

2. Investments made by investors of either Contracting Party shall at all times, in the territory of the other contracting party fair and equitable treatment and protection and security.

Article 3. Provisions Relating to the Most Favoured Nation

1. Investments made by investors of either Contracting Party shall be accorded at all times fair and equitable treatment and not less favourable than that which it accords to investments of investors of a third State.

2. Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, revolution, a national state of emergency, revolt, riot or insurrection in the territory of that Contracting Party shall be accorded by that Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded by that other party to its own investors or those of any third State. Payments of compensation shall be freely transferable.

Article 4. Exceptions

The provisions of this Agreement relating to the grant of treatment no less favourable than that accorded to investors of any third State shall not be construed so as to oblige one contracting party to extend to investors of the other the treatment of any benefit or privilege, preference by virtue of:

a) Any customs union, free trade area, monetary union existing or future international agreement or any similar or other forms of regional economic cooperation to which either of the contracting parties is or may become a party; or

b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable time limits;

c) An international agreement or arrangement relating wholly or partially to taxation or any domestic legislation relating wholly or partially to taxation.

Article 5. Expropriation

1. Neither Contracting Party shall take measures of expropriation, nationalization or dispossession other, or any other measure having effect equivalent to nationalization or the investment of investors against expropriation of the other contracting party unless the following conditions are met:

a) These measures are taken for a public purpose and under due process;

b) The measures are not discriminatory;

c) The measures are accompanied by provisions for the payment of prompt, effective and adequate compensation. The compensation shall be equivalent to the market value of the expropriated investment immediately before the expropriation took place or before it is made public and shall be paid without delay. The compensation shall include interest calculated on the LIBOR rate of interest from the date of expropriation. The compensation shall be effectively realizable and freely transferable.

2. The investor whose investments are expropriated shall have a right to prompt review of their case by a judicial authority or any other competent authority of the contracting party making the expropriation to determine whether the expropriation and the amount of compensation conforms to the principles of this article and the laws of that Party.

3. Investors referred to in subparagraph (a) (iii) of paragraph (c) of article 1 may not invoke paragraphs of this article if the compensation has been paid pursuant to a similar provision of another agreement relating to the protection of investments concluded by the Contracting Party in whose territory the investment has been made.

Article 6. Transfers

1. Each Contracting Party shall, subject to its laws and regulations allow, without undue delay the transfer in a freely convertible currency.

a) The net profits, dividends, royalties, fees and technical assistance services, interest and other current income accruing from any investment made by investors of the other contracting party;

b) The proceeds of liquidation of all or part of an investment made by investors of the other contracting party;

c) The funds in repayment of loans related to an investment;

d) The remuneration of citizens and permanent residents of a Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other contracting party.

2. The exchange rates applicable to the transfer referred to in paragraph 1 of this article shall be that applicable at the time of the transaction.

3. The Contracting Parties undertake to accord to transfers referred to in paragraph 1 of this article a treatment no less favourable than that accorded to transfers related to investments made by investors of any third country.

Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. In order to resolve disputes that may arise with respect to investments between a Contracting Party and an investor of the other contracting party, there shall be consultations between the parties to the dispute as far as possible be settled amicably.

2. If these consultations do not result in a period of six months from the date on which the request for settlement, the investor may submit the dispute, at his discretion:

a) Before the competent court of the Contracting Party in whose territory the investment has been made;

b) Before the International Centre for Settlement of Investment Disputes (ICSID), having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C. on 18 March 1965, in the event both contracting parties have become parties to this Convention; or

c) Before an ad hoc arbitration tribunal which, unless the parties to the dispute otherwise agree, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each contracting party hereby consents to any dispute concerning an investment may be submitted to conciliation or to international arbitration.

4. The Contracting Party which is a party to the dispute shall, at any stage of the proceedings relating to investment disputes, assert its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the loss or damage incurred.

5. The arbitral awards shall be final and binding on both parties to the dispute. Each Contracting Party shall execute them in

accordance with its laws and in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention), if the contracting parties are Parties to this Convention.

Article 8. Settlement of Disputes between the Contracting Parties

1. Any dispute between the contracting parties concerning the interpretation or application of this agreement should, as far as possible, be settled through diplomatic channels.
2. If a dispute between the Contracting Parties thus cannot be settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted as follows: in each case within two months after the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. They then select a national of a third State who on approval of 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 the specified appointments have not been made within the periods specified in paragraph 3 of this article, 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 if he is otherwise prevented from discharging this task, 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 this task, the most senior member of the International Court of Justice, who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. The decision is binding on both contracting parties. Each Contracting Party shall bear the cost 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. The Tribunal in its decision however may direct that a higher proportion of costs be borne by one of the two contracting parties and this decision is binding on both parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

If a Contracting Party or its designated agency makes a payment to one of its investors under a guarantee given in respect of an investment, or, without prejudice to the rights conferred on the first Contracting Party or its designated agency by it under article 7, recognizes the transfer of any right or title to the former investor of that Contracting Party or its designated agency by it and the first subrogation of the Contracting Party or its designated agency by law or under audit.

Article 10. More Favourables Provisions

If the legislation of either Contracting Party or obligations under international law, that they are currently in force or undertaken subsequently accord to investors of the other contracting party to more favourable treatment than that provided for by the present Agreement, such treatment shall prevail.

Article 11. Consultation and Exchange of Information

At the request of either Contracting Party, the other contracting party must without delay to enter into consultations concerning the interpretation or application of this Agreement. at the request of either of the Contracting Parties, the exchange of information on the impact of the laws, regulations, decisions, practices, or administrative procedures or policies of the other Contracting Party may have on investments covered by this Agreement.

Article 12. Application for Investment

This Agreement shall apply to investments made from 29 December 1990 in the territory of either Contracting Party, in accordance with its laws and regulations by investors of the other Contracting Party.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date on which the contracting parties have informed the formalities of constitutional requirements for the entry into force of this Agreement.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph 3 of this article.

3. Either Contracting Party may by written notification to the other party one (1) year in advance, terminate this Agreement at the end of the initial ten (10) years or at the end of each successive.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions contained in the other articles of this Agreement shall continue to produce their effect for a period of ten (10) years from the date of denunciation.

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

Done in duplicate in Hanoi on 27 September 1995 in the Republic of Lithuania, Vietnamese and English languages, all texts being equally authentic. In case of divergence between the texts of this Agreement, the English text shall prevail.

For the Government of the Republic of Lithuania

For the Government of the Socialist Republic of Viet Nam