

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Socialist Republic of Viet Nam and the Government of the Republic of Finland

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the Territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement unless the context otherwise requires:

(1) The term "Investment" means any kind of asset, invested by an investor of one Contracting Party in the Territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights including property under a leasing agreement;

(b) Shares and other kinds of interest in companies;

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

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or rights under contract, including concessions to search for, develop, extract or exploit natural resources;

(2) The term "Returns" means the amount yielded by an investment, and in particular, though not exclusively, shall include capital gains, profits, interests, dividends, licenses, royalties, fees or other current incomes.

(3) The term "Investor" means:

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal person having its seat in the Territory of either Contracting Party.

(4) The term "Territory" means the national territory of each Contracting Party, including the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investments, promote in its Territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof as well as the

acquisition of goods and services and the sale of their production, through unreasonable or discriminatory measures.

(3) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the Territory of one of the Contracting Parties, this Contracting Party shall - notwithstanding its own national requirements for bookkeeping and auditing - permit the investment to be also subject to bookkeeping and auditing according to standards which the investor is subjected to by his national requirements and according to internationally accepted standards such as International Accounting Standards (IAS) drawn up by the International Accounting Standards Committee (IASC). The result of such accountancy and audit shall be freely available to the investor.

Article 3. Treatment of Investments

(1) Each Contracting Party shall apply to investments in its Territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments by investors of third States.

(2) Notwithstanding the provisions of paragraph (1) of this Article, a Contracting Party which has concluded an agreement regarding the formation of a customs union or a free-trade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) Compensation for cases referred to in paragraph (1) of this Article shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation or expropriation decision became publicly known. The compensation shall include interest at the rate of London Interbank Offered Rate (LIBOR) for 3-month deposits in the respective currency from the date of expropriation or loss until the date of payment.

Article 5. Compensation for Losses

(1) Investors of each Contracting Party whose investments in the Territory of the other Contracting Party suffer losses owing to any armed conflict, including war, a state of national emergency or civil disturbances or other similar events in the Territory of the other Contracting Party shall be accorded by the other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, which is no less favourable than of that which the other Contracting Party accord to the investors of any third State.

(2) Without prejudice to paragraph (1) of this Article investors of each Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the Territory of the other Contracting Party resulting from requisitioning or destruction of their property by forces or authorities of the other Contracting Party, shall be accorded restitution or prompt, adequate and effective compensation.

Article 6. Transfer of Payments

(1) Each Contracting Party shall in respect to investments by investors of the other Contracting Party in its Territory allow transfers related to these investments into and out of its Territory. The freedom of transfer shall include in particular, but not exclusively:

(a) The initial capital plus any additional capital for the maintenance and development of an investment;

(b) Returns;

- (c) Payments arising out of the settlement of a dispute;
 - (d) Payments under a contract, as well as amortisation of principal and accrued interest payment pursuant to a loan agreement;
 - (e) Compensation pursuant to Article 4 and 5;
 - (f) Proceeds from the sale or liquidation of all or any part of an investment;
 - (g) Unspent earnings and other remuneration of personnel engaged from abroad in connection with that investment.
- (2) Transfers under paragraph (1) of this Article shall be effected without delay and in a freely convertible currency.
- (3) Transfers shall be made at the prevailing market rate of exchange on the date of transfer.

Article 7. Subrogation

If a Contracting Party or its designated organ makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the Territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the transfer of any right or title of such an investor to the former Contracting Party or its organ and the subrogation of the former Contracting Party or its organ to any such right or title.

Article 8. Disputes between an Investor and a Contracting Party

- (1) Any dispute between one of the Contracting Parties and an investor of the other Contracting Party concerning the interpretation or application of this Agreement shall, if possible, be settled amicably.
- (2) If the dispute cannot thus be settled within six months following the date, on which the dispute has been raised by either party, it shall at the request of either party be submitted to arbitration for a definitive settlement. For the arbitration procedure shall be applied the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the General Assembly on 15 December 1976.

Article 9. Disputes between the Contracting Parties

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.
- (2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.
- (3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.
- (4) If the time limits referred to in paragraph (3) of this Article have not been complied with, 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.
- (5) If the President of the International Court of Justice is prevented from discharging the function provided for in paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.
- (6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 10. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the Territory of the other Contracting Party.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 11. Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the two 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 twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorized to this effect by their respective Governments, have signed this Agreement.

Done at Helsinki, on this 13th day of September, 1993 in duplicate in the English, Vietnamese and Finnish languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

For the Government of the Republic of Finland

For the Government of the Socialist Republic of Viet Nam