

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Cambodia and the Government of the Socialist Republic of Vietnam (hereinafter referred to as "Contracting Parties");

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Intending to create favourable conditions for investments by nationals of one Contracting Party on the basis of sovereign equality and mutual benefit, and

Recognizing that the Agreement on the Promotion and Protection of such Investments will be conducive to the stimulation of investment activities in both countries;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investment" shall mean any kind of asset invested by nationals of one Contracting Party in the territory of the other Contracting Party and admitted, in conformity with the laws and regulations of the latter, including, but not exclusively:

- a. Movable and immovable property as well as other rights such as mortgages, privileges, and guarantees and any other similar rights;
- b. Rights derived from shares, bonds or any other form of interest in companies in the territory of the other Contracting Party;
- c. Claims derived from shares, bonds or any performance having a financial value;
- d. Intellectual property rights, technical processes, goodwill and know-how;
- e. Business concessions having an economic value conferred by law or under contract related to investment including concessions to search for or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as an investment, provided that such alteration has also been approved or admitted under Article II. 2. The term "national" shall mean

- (i) Natural persons having the nationality of that Contracting Party;
- (ii) Legal persons constituted under the law of that Contracting Party.

3. The term "without delay" shall mean such period as is normally required for the completion of the necessary formalities for the transfer of payment.

4. "Territory" shall mean:

- a. In respect of the Kingdom of Cambodia: the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of territorial sea over which the Kingdom of Cambodia exercise in accordance with international law, sovereign rights or jurisdiction.

b. In respect of the Socialist Republic of Vietnam, all land territory (including islands), territorial sea and airspace above, over which the Socialist Republic of Vietnam has sovereignty, the right of sovereignty and jurisdiction in accordance with the national and international law;

5. The term "returns" shall mean the amounts yielded by an investment for a definite period of time as profits, interest, capital gains, dividends, royalties, fees and other legitimate returns.

Article II. Promotion and Protection of Investments

1. Either Contracting Party shall encourage and create favourable conditions for nationals of the other Contracting Party to invest in its territory, and shall admit such investment in accordance with its Constitution, laws and regulations.

2. Investments of nationals of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

Article III. Most-favoured-nation Provisions

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investment adequate physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded to investments of nationals of any third state.

3. If a Contracting Party has accorded special advantages to nationals of any third state by virtue of existing or future agreements establishing customs unions, economic unions, monetary unions or similar institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

4. The provision of this Article shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by an Avoidance of Double Taxation Treaty between the two Contracting Parties and/or the domestic laws of each Contracting Party.

Article IV. Expropriation

Each Contracting Party shall not take any measures of expropriation, nationalization, or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of a national of the other Contracting Party except under the following conditions:

a. The measures are taken for a lawful purpose, for public interest and under due process of law;

b. The measures are non discriminatory;

c. The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investments affected immediately before the measures of expropriation became a public knowledge. Such market value shall be determined in accordance with internationally acknowledged practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto, and it shall be freely transferable in freely usable currencies from the Contracting Party.

Article V. Compensation for Losses

1. Nationals 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 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.

2. The treatment shall not be less favourable than that which the latter Contracting Party accords to its own nationals or nationals of any third State, whichever is more favourable to the nationals concerned.

Article VI. Transfers

1. Each Contracting Party shall, subject to its laws and regulations, allow without unreasonable delay the free transfer of investments made by nationals of the other Contracting Party. Such transfer shall include, in particular, though not exclusively:

- a. Profits, interests, dividends and other current income accruing from investments;
- b. Funds necessary: ;(i) For the acquisition of raw or auxiliary materials, semi-fabricated or finished products; or
(ii) To replace capital assets in order to safeguard the continuity of an investment;
- c. Additional funds necessary for the development of an investment;
- d. Funds in repayment of loans related to the admitted investments;
- e. Royalties or fees;
- f. Earnings of natural persons;
- g. Proceeds accruing from sale or liquidation of the investment;
- h. Compensation for losses pursuant to Article 5;
- i. Compensation for expropriation pursuant to Article 4;

2. The exchange rate applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

Article VII. Subrogation

In case one Contracting party has granted any insurance or guarantee agreement against non-commercial risks in respect of an investment made by its own investors in the territory of the other Party and has made payments to such investors under the guarantee, the other Party shall recognize the transfer of the economic rights of the investors to said Contracting Party. The subrogation will make it possible for one Contracting Party to receive payments for compensation that the investor would have been entitled to. This does not necessary imply, however, a recognition on the part of the other Contracting Party of the merits of any case or the amount of any claim arising therefrom.

In respect of property rights or any other rights derived from ownership of the investment, subrogation will take place after the legal requirements of the investments of the host Party of the investment have been met.

Article VIII. Settlement of Disputes between a National and a Contracting Party

1. Any dispute between a Contracting Party and a national of the other Contracting Party, concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations.

2. If such a dispute cannot be settled within a period of six months from the date of the written notification by either Party who requested amicable settlement, the dispute shall, at the request of the national concerned, be submitted either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation.

3. In case the dispute is submitted to arbitration or conciliation the national shall be entitled to refer the dispute to:

(a) The International Center for the Settlement of Investment Disputes under 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 case both Contracting Parties have become the Parties to the Convention; or

(b) An ad hoc tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). An arbitral award shall be final and binding on both parties to the dispute.

4. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated or a Contracting Party has failed to abide by or comply with the award rendered by an arbitral tribunal.

Article IX. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if

possible, be settled through diplomatic channels.

2. If disputes between the Contracting Parties cannot thus be settled, 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 two months of 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 which has diplomatic relations with both Contracting Parties and who on approval by the 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 period 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 to make any necessary appointment. 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 a necessary appointment. If the Vice-President is a national of either Contracting Party or 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 shall determine its own procedure and shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties.

6. Each Contracting Party shall bear the cost of its own member of the Tribunal and of its representation in an arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and its award shall be binding on both Contracting Parties.

Article X. Applicability of this Agreement

This Agreement shall apply to investments made and admitted in the territory of either Contracting Party in accordance with its laws and regulations concerning foreign investment or any law amending or replacing it, but shall not apply to any dispute, claim or difference which arose before its entry into force.

Article XI. Application of other Provisions

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article XII. Consultation and Amendment

1. Either Contracting Party may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent of both Contracting Parties.

Article XIII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date of the later notification by the Contracting parties in writing, through diplomatic channels, that their internal legal requirements for the entry into force of the Agreement has been complied with.

2. This Agreement shall remain in force for a period of ten (10) years. It shall remain in force thereafter until either Contracting Party notifies the other Contracting Party in writing of the intention to terminate this Agreement. The notice of the termination shall become effective one year after the date of notification.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles I to XII shall remain in force for a further period of ten (10) year from the date of termination of the present Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate aton,2000, in Khmer, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation the English texts shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM