

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM FOR THE PROTECTION AND PROMOTION OF INVESTMENTS**

The Government of the United Arab Emirates and the Government of the Socialist Republic of Viet Nam (hereinafter referred to as the "Contracting Parties")

Desiring to create favorable conditions for the development of economic cooperation between them and in particular for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term 'investment' shall mean every kind of asset in the territory of one Contracting Party invested by an investor of the other Contracting Party in accordance with the laws and regulations of that former Contracting Party, and in particular, though not exclusively, includes :

(a) A company shares, stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a company, and other debts and loans and securities issued by any investor of a Contracting Party;

(b) Claims to money and claims to any other assets or performance pursuant to contract having an economic value;

(c) Intellectual property rights, including copyrights, trademarks, patents, industrial designs and patterns and technical processes, know-how, trade secrets, trade names and goodwill;

(d) Any right conferred by law, contract or by virtue of any licenses or permits granted pursuant to law;

However, this Agreement shall not grant any right or create any obligation pertaining to the Natural Resources of each Contracting Party (including without limitation tangible or intangible property rights or property interest therein)

(e) Any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Any change in the form in which assets or rights are invested or reinvested shall not affect their character as investments provided that such change is in accordance with the laws and regulations of the host Contracting Party.

2. The term "investor" with respect to a Contracting Party shall mean:

(a) A natural person holding the nationality of that Contracting Party in accordance with its applicable laws;

(b) A legal person constituted or incorporated under the laws and regulations of that Contracting Party, governmentally or privately owned, such as authority, corporation, partnership, trust, joint-venture, association or enterprise.

3. The term "returns" shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalties, and management, technical assistance or other payments or fees, and payments in kind, regardless of its type.

4. The term "territory" shall mean:

(a) As regards the Socialist Republic of Viet Nam, its land territory, islands, internal waters, territorial sea and airspace above them, the maritime areas beyond territorial sea including seabed and subsoil thereof over which the Socialist Republic of Viet Nam exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law.

(b) As regards the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in conformity with international law and the law of United Arab Emirates sovereign rights, including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources.

5. The term "freely convertible currency" shall mean the EURO, the United States Dollars, the United Kingdom Pound Sterlings, the Japan Yen, and any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

## **Article 2. Scope of Application**

1. This Agreement shall apply to investments made by investors of a Contracting Party in the territory of the other Contracting Party prior to as well as after the entry into force of this Agreement.

2. This Agreement shall not apply to investment disputes arising out of events which occurred, or to investment disputes which had been settled, or which were already under judicial or arbitral process, prior to the entry into force of this Agreement.

3. This Agreement shall not apply to taxation.

## **Article 3. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such investment.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

## **Article 4. Treatment of Investments**

1. With respect to the use, management, conduct, operation, expansion and sale or other disposition of investments made in its territory by investors of the other Contracting Party, each Contracting Party shall accord treatment no less favorable than that it accords, in like situations, to investments of investors of any third state ("most favored nation treatment").

2. The Most Favoured Nation Treatment shall not apply to procedural or juridicial matters.

3. The provision of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any customs union, economic union, free trade area, monetary union, or other form of regional or bilateral economic agreement or other similar international agreement, to which either of the Contracting Parties is or may become a party;

(b) Any international, regional or bilateral agreement or other similar arrangement or any domestic legislation relating wholly or mainly to taxation.

## **Article 5. Compensation for Losses**

When investments made by an investor of either Contracting Party suffers a loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, he shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that the latter Contracting Party accords to its own investor or investor of any third state, whichever is more favorable to the investor.

## **Article 6. Expropriation**

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated or subject to measures tantamount to nationalization or expropriation such as blocking or freezing in the territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures of the expropriating Contracting Party.

2. Such compensation shall amount to the market value of the expropriated investments at the time of its expropriation or at the time of announcement of such expropriation, whichever is the earlier, and shall be effectively realizable. Compensation shall be made in a freely convertible currency.

Such compensation shall include interest at the LIBOR-rate, from the date of expropriation until the date of payment.

Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, book value and goodwill.

3. Notwithstanding paragraph 1 and 2 above, any measure of expropriation relating to land shall be subject to laws and regulations of the expropriating Party concerning the terms of such expropriation and the payment of compensation.

4. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by an administrative authority of the other Contracting Party that has taken such measure, of their case and of the valuation of their investments in accordance with the principles set out in this Article and the laws and regulations of expropriating Contracting Party.

5. The investor shall have the right to contest against the above-mentioned measures taken by the other Contracting Party to the local judicial bodies or the local courts thereof.

6. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall be applied to their portion in such company.

## **Article 7. Transfer of Payments Related to Investments**

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

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

(b) Returns;

(c) Payments under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;

(d) Royalties and fees for the rights referred to in Article 1 paragraph 1(c);

(e) Proceeds from the sale or liquidation of the whole or any part of the investment;

(f) Earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(g) Payments of compensation pursuant to Articles 5 and 6;

(h) Payments arising out of the settlement of disputes.

2. Transfers shall be made at the prevailing market rate of exchange in the host Contracting Party on the date of transfer for the currency to be transferred.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency (the "Indemnifying Party"), makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party (the "Host State"), the Host State shall recognize:

(a) The assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims resulting from such an investment;

(b) The right of the Indemnifying Party to exercise all such rights and enforce such claims and to assume all obligations related to the investment by virtue of subrogation.

2. The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of:

(a) The rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above;

(b) Any payments received in pursuance of those rights and claims, as the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

3. Notwithstanding provisions of paragraph 1 and 2 of this Article, subrogation shall be subject to the prior consent of the Contracting Party in whose territory the investment has been made.

## **Article 9. Performance Requirements**

Once established, investment of investor of either Contracting Party shall not be subject to performance requirements which are prohibited by the TRIMs Agreement of the WTO and which may be detrimental to their viability or adversely affect their use, management, operation, conduct, or sale or other disposition.

## **Article 10. Settlement of Disputes between a Contracting Party and an Investor**

1. Any legal dispute arising directly out of an investment, between a Contracting Party and an investor of the other Contracting Party shall be settled amicably through negotiations between the parties to the dispute. The disputing Contracting Party may request consultation with the disputing investor on the subject including the development of procedures that may be appropriate. At such a request the parties to the dispute shall enter into consultation with a view toward to settle such claim and establishing such procedures.

2. If any such dispute cannot be settled within six (6) months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, the dispute may be submitted to:

(a) The competent court of the Contracting Party in the territory of which the investment has been made; or

(b) The International Center for Settlement of Investment Disputes (the "Center") established pursuant to the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties are parties to the said Convention; or

(c) The Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Washington Convention; or

(c) An ad hoc arbitral tribunal which, unless and otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

In connection with any matter regarding this Agreement, a Party may request the exhaustion of local remedies, administrative or judicial remedies as the condition of its consent to arbitration.

Once the investor has submitted the dispute under any of the procedures stipulated above, that choice is final.

For greater certainty, the Most Favored Nation Treatment provision in this Agreement does not encompass a requirement to extend to the investors of the other Contracting Party dispute settlement procedures other than those set out in this Agreement.

3. The submission of a dispute by an investor to arbitration shall be subject to the laws and regulations of the host Contracting Party.

4. The arbitration tribunal shall take its decisions in accordance with the provisions of this Agreement, the laws and regulations of the Contracting Party involved in the dispute on which territory the investment is made (including its rules on the conflict of law), the terms of any specific agreement concluded in relation to the particular investment involved and the relevant principles of international law.

5. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.
2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing, either Contracting Party may, by written notice to the other Contracting Party, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.
3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.
4. If the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice 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 shall take its decision by a majority of votes. Such decision shall be made in accordance with this Agreement and such recognized rules of international law as may be applicable and shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the arbitral tribunal appointed by that Contracting Party, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

## **Article 12. Application of other Rules**

If the obligations under international agreements existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by this Agreement, such rules shall to the extent that they are more favorable to the investor prevail over this Agreement.

## **Article 13. Entry Into Force**

Each Contracting Party shall notify the other in writing when its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

## **Article 14. Duration and Termination**

1. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph (2) of this Article.
2. Either Contracting Party may, by giving one (1) year's written notice to the other Contracting Party, terminate this agreement at the end of the initial ten (10) year period or anytime thereafter.
3. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

## **Article 15. Amendment**

Upon the request of either Contracting Party for the amendment of this Agreement, through a written notification to the other Contracting Party at any time, both Contracting Parties shall meet to discuss any proposed amendment of this Agreement. The amendment as agreed by the two Contracting Parties shall enter into force in the same manner as this Agreement and form an integral part of this Agreement.

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

Done in duplicate in Abu Dhabi on Monday 16-2-2009 in the English language.

For the Government of the United Arab Emirates"

Obaid Humaid Al Tayer

Minister of State for Financial Affairs

For the Government of the Socialist Republic of Viet Nam

Nguyen Chi Dung

Vice Minister of Planning and Investment