

# **Agreement on the Promotion and Protection of Investment between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Cuba**

The Government of the Socialist Republic of Vietnam and the Government of the Republic of Cuba, hereinafter referred to as "the Contracting Party",

Desiring to create favourable conditions for inscreasing economic cooperation between both countries, and particularly for the investments by investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the promotion and mutual protection of such investments under this Agreement shall encourage entrepreneurial initiatives which shall fosters prosperity for both Contracting Parties

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of the present Agreement:

1. The term "investment", regardless the legal form selected and the legal order of reference, means any kind of assets invested by an investor of one Contracting Party in the territory of the other Contractng Party pursuant to the laws and regulations in force in the latter, and particular, although not exclusively, of the following:

a) Movable and immovable property, as well as any other property rights;

b) Shares, certificates, obligations , and other forms of participations in companies;

d) Any industrial and intellectual property rights, including patents, trademarks, tradenames, copyrights, industrial design, commercial secrets, know-how and goodwill;

e) Any economic rights granted by virtue of laws or by contract and any licence or grant pursuant to the law on economic activities, including those rights to search for and exploit natural resources.

2. The term "investor" means any legal or natural person of one Contracting Party who has made or makes an investment in the territory of the other Contracting Party.

3. The term "natural person" as regard to each of the Contracting Parties, means any individual who is a citizen of this Contracting party pursuant to its laws;

4. The term "legal person" as regard to each of the Contracting Parties, means any entity established in the territory of one of the Contracting Parties according to its laws, regarless of the fact that its liability is limited or unlimited.

5. The term "return" means the amounts obtained from an investment, and in particular, though not exclusively, the profits, dividends, capital gains, interests, royalties, fees for assistance and technical services.

6. The term "territory" includes the land territory, the maritime zones and the sub-maritime zone over which each of the Contracting Party has jurisdiction and sovereign rights pursuant to international law.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory pursuant to its laws and regulations.

2. Each Contracting Party shall always accord fair and equitable treatment to investments made by investors of the other

Contracting Party in its territory. Each of the Contracting Parties shall guarantee that no discriminatory or unjustified measures be taken against the procurement, maintenance, utilization, transformation, termination or liquidation of the investments made in its territory by investors of the other Contracting Party.

### **Article 3. Most Favoured Nation Treatment**

1. Each of the Contracting Parties shall, in its territory, accord to the investments made and the returns obtained by investors of the other Contracting Party a treatment no less favourable than that accorded to investments made and the returns obtained by investors of any third country.
2. The provisions of paragraph (1) shall not apply to any advantages and privileges that one Contracting Party grants or shall grant to investors of any third country by virtue of its membership in any custom union, common market, free trade area or by virtue of its party in any regional and subregional agreement or multilateral international economic agreement or by virtue of any double taxation avoidance agreement or any agreement to facilitate the frontier exchange.

### **Article 4. Compensation for Damages and Losses**

In case the investors of one of the Contracting Parties suffer damages or losses owing on their investments in the territory of the other Contracting Party owing to war or other armed conflicts, state of emergency or other similar circumstances, the Contracting Party where the investment is made, shall give proper compensation or restitution or indemnification or get into another type of agreement. Relevant payments shall be made without undue delay and in freely convertible currency.

The investors shall be granted the same treatment as that granted to investors of the Contracting party under obligation, and in any case, shall be granted a treatment no less favourable than that granted to investor from any third country.

### **Article 5. Expropriation**

1. Investments and returns of investors of one of the Contracting Parties shall enjoy full protection and safety in the territory of the other Contracting Party.
2. Investments and returns of investors of one of the Contracting Party in the territory of the other Contracting Party shall not be directly or indirectly nationalized, expropriated or subjected to measures having similar effects (hereinafter referred to as "expropriation"), unless such measures are made for public benefit, national or public interest, with proper compensation, in a non discriminatory manner pursuant to the law in force.
3. Such compensation shall be equivalent to the effective market value of the investment expropriated immediately prior to the date when the decision to expropriate has been made public. In the case that the market value can not be expeditiously verified, the compensation shall be determined upon the basis of a just evaluation which takes into account the capital invested, depreciation, capital already repatriated and other relevant factors. The compensation shall include interests drawn the expropriation date until the date of payment. In the case that no agreement is reached between the investor affected and the Contracting party making the expropriation, the compensation shall be made as per the procedure for the solution of disputes under Article 8.

Once compensation is determined, payments shall be expeditiously effective and repatriation of such funds shall be made in any freely convertible currency agreed by the Parties.

### **Article 6. Transfers**

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of their returns and other payments resulting from their investments upon the payment of all taxes and charges stipulated under its laws, including, although not exclusively, of the following:

- a) Investment returns as defined in Article 1;
- b) The compensation provided for under Article 4 and 5;
- c) The amount resulting from the total or partial sale or liquidation of an investment;

2. The payments referred to in this Article shall be effected at the exchange rates prevailing on the date of the transfer in the territory of the Contracting party from which the transfer is made.

### **Article 7. Subrogation**

In case one Contracting party or its institution grants an insurance guarantee against non-commercial risks to investments made by its investors in the territory of the other Contracting party and makes payment to this investor under the guarantee, such Contracting party shall be acknowledged as subrogated by right in the same credit standing as the investor covered by the insurance guarantee. The payments to be made to the Contracting party or its institution as a result of the subrogation shall be made pursuant to Articles 4, 5 and 6 of the present Agreement.

## **Article 8. Settlement of Investment Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. Any dispute arising out of an investment between one of the Contracting parties and an investor of the other Contracting party shall, as far as possible, be settled amicably between the parties to the dispute.
2. If the dispute according to the paragraph (1) cannot be settled amicably within six months from the date of the written notification of the dispute, the dispute shall be submitted , at the investor's choice, to:
  - a) The competent arbitration court in the territory of the Contracting party where the dispute takes place;
  - b) An ad hoc arbitration court established under the arbitration rules of the United Nation Commission on Intenational Trade Law (UNCITRAL).
3. The decision of the arbitration court shall be final and biding on the parties in the dispute. Each Contracting party shall recognise and enforce the decision according to its laws.
4. During the arbitration proceedings or the execution of the decision of the arbitration court, the Contracting Party in litigation shall refrain from objecting the circumstance that the investor of the other Contracting Party has received total or partial compensation by virtue of an insurance guarantee.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting parties concerning the interpretation or application of the present Agreement shall, as far as possible, be settled amicably by consutation through diplomatic channels.
2. If the dispute according to paragraph (1) cannot be settled within three months from the date when one of the Contracting party has notified in writing the other, the dispute shall, upon request of either Contracting party, be submitted to an ad hoc Arbitration court as stipulated in this Article.
3. The aritration court shall be constituted as folows: each Contracting party shall appoint one arbitrator within 2 months from the date one Contracting party has informed the other Contracting party its intend to submit the dispute to an arbitration court. The two arbitrators shall appoint a citizen of a third country who will be Chief arbitrator. The chief Arbitrator shall be appointed within 3 months after the appointment of the two arbitrators.
4. If the appointments have not been made within the periods stipulated in paragraph (3) of this Article, either Contracting party may make an application to the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a citizen of either Contracting party or if it is not possible for him to act as an appointor, the Vice-President of the International Court of Justice shall be invited to act as an appointor. If the Vice - President is a citizen of either Contracting party or if it is not possible for him to act as an appointor, then the member of the International Court of Justice next in seniority who is not a citizen of either Contracting party, shall be invited to act as an appointor.
5. The decision of the arbitration court shall be made by majority vote and it shall be final and binding on both Contracting parties. Each Contracting party shall bear the expenses of its own arbitrator and its representatives in the arbitration proceedings. The expenses of the Chief Arbitrator and other expenses shall be equally shared by both Contracting Parties. The arbitration court shall determine its own procedure.

## **Article 10. Application Limits**

This Agreement shall be relevant to investments made by investors of one of the Contracting Party in the territory of the other Contracting party before its entry into force provided that such investments have been made in accordance with its laws and regulations. This Agreement shall be applicable to subsequent investments made within the limits and coverage of this Agreement.

## **Article 11. Application of More Favourable Regulations**

1. If an issue is regulated by the present Agreement, by another International Agreement of which both Contracting parties are parties or by General International Laws, the regulations which are the most favourable to the Contracting parties and their investors shall be applied.

2. If one of the Contracting parties, upon the basis of its laws and regulations, has adopted conditions which are more favourable than those regulated under this Agreement, the most favourable treatment shall be applicable to the investors of the other Contracting party.

## **Article 12. Entry Into Force, Extension and Termination**

1. This Agreement shall enter into force on the date on which the Contracting parties have notified each other that the respective constitutional formalities required for the entry into force of international agreements have been completed. This Agreement shall be in force for a term of ten years and shall be automatically extended for terms of five years.

2. This Agreement may be denounced by each Contracting party by prior notification in writing six months prior the date of its expiration.

3. In case of termination, Articles 1 to 10 of this Agreement shall be continue in force and be applicable for a term of ten years to investments made prior to termination.

Done in Havana City on the 12th day of the month of October of 1995, in two original copies, in Vietnamese, Spanish and English languages, all of which are equally authentic. In case of differences in the interpretation of these texts, the English text shall prevail.

For the Government of the Socialist Republic of Vietnam

For the Government of the Republic of Cuba