

# Agreement between the Government of the Republic of Estonia and the Government of the Socialist Republic of Viet Nam on the Promotion and Protection of Investments

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

RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the both countries;

AGREEING that a stable framework for investment will contribute to maximising the effective utilisation of economic resources and improve living standards;

RECOGNISING that the development of economic and business ties can promote respect for internationally recognised labour rights;

AGREEING that these objectives can be achieved without undermining health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purpose of this Agreement:

1. The term "investor" means, for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and the provisions of this Agreement:

- a. Any natural person who is a national of the first Contracting Party in accordance with its laws and regulations; or
- b. Any legal entity such as company, corporation, partnership, business association, institution or organisation, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.

2. The term "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:

- a. Movable and immovable property or any property rights such as mortgages, pledges and similar rights;
- b. Reinvested returns;
- c. Shares in and stocks and debentures of a company or any other forms of participation in a company;
- d. Claims to money or rights to a performance having an economic value;

e. Intellectual property rights, such as patents, copyrights, trade marks, industrial designs, business names, geographical indications as well as technical processes, know-how and goodwill; and

f. Concessions conferred by law, by an administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any change in the form in which assets are invested or reinvested does not affect their character as investments provided that such a change is made in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made.

3. The term "returns" means the amounts yielded by investments and shall in particular, though not exclusively, include profits, dividends, interests, royalties, capital gains or any payment in kind related to an investment.

4. The term "territory" means:

a. With respect to the Republic of Estonia, the territory of the Republic of Estonia including the territorial sea, as well as any maritime area adjacent to the external boundary of the territorial sea, where the Republic of Estonia in conformity with international law exercises sovereign rights.

b. 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.

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

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit such investments.

2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments of investors of the other Contracting Party.

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and to their investments with respect to the acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.

2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of any third state and to their investments with respect to the acquisition, expansion, operation, management, maintenance, use and sale or other disposal of investments.

3. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is the more favourable to the investors or investments.

4. The provisions of paragraph 1 of this Article shall not apply to existing or future non-conforming measures maintained or adopted within the territory of the Socialist Republic of Viet Nam or any future amendment thereto provided that the amendment shall be made in conformity with the provisions on the Most Favoured Nation Treatment provided for in this Agreement. Treatment granted to investments once admitted, shall in no case be worse than the treatment granted in accordance with the provisions of this Article at the time when the original investment was made. The Government of the Socialist Republic of Viet Nam will take appropriate measures to progressively remove such non-conforming measures.

## **Article 4. Exemptions**

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and to their investments the benefit of any treatment, preference or privilege by virtue of any existing or future:

- a. Free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party, or
- b. Agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation, or
- c. Multilateral or regional agreement relating wholly or mainly to investments.

## **Article 5. Expropriation**

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures, direct or indirect, having an effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The value shall be determined in accordance with generally accepted principles of valuation.
3. Compensation shall be fully realisable and shall be paid without any restriction or delay. In case of a delay in payment, it shall include interest at a commercial rate established on a market basis for the currency of payment from the due date until the date of actual payment.
4. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of the Contracting Party carrying out the expropriation.

## **Article 6. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot or other similar event in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors or investors of any third state, whichever, according to the investor, is more favourable.

## **Article 7. Free Transfer**

1. In accordance with its laws and regulations and international law, each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments and payments related to investments.

Such payments shall include in particular, though not exclusively

- a. Principal and additional amounts to maintain, develop or increase the investment
  - b. Returns
  - c. Proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares
  - d. Amounts required for the payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, licence fees or other similar expenses
  - e. Payment pursuant to Articles 5, 6, 8 and 9
  - f. Earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.
2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Article shall be made without any restriction in a freely convertible currency of the choice of the investor and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be transferable without delay.
  3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.
  4. The provisions of this Article shall not be construed so as to prevent a Contracting Party from fulfilling in good faith its

obligations as a member of an economic or monetary union, free trade agreement or any similar regional economic integration arrangements.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee or contract of insurance given in respect of an investment of the investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such an investor to the former Contracting Party or its designated agency, and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

1. Any legal dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.
2. If the dispute has not been settled within three months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted to:
  - a. The competent courts of the Contracting Party in whose territory the investment is made; or
  - b. Arbitration by the International Centre for Settlement of Investment Disputes (the "Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, 18 March 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention; or
  - c. Arbitration by the Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Washington Convention referred to in subparagraph (b) of this paragraph; or
  - d. An ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
  - e. Any other previously accepted ad hoc arbitration tribunal.
3. Once the investor has submitted the dispute to the competent court of the host Contracting Party or to one of the arbitration procedures stipulated in paragraphs 2(b) to 2(e) of this Article, the choice of the procedure is final.
4. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.
5. Neither of the Contracting Parties, which is a party to the dispute, can raise an objection, at any phase of the arbitral proceedings or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.
6. The award 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, by the competent authorities of the Contracting Party by the date indicated in the award.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through negotiations.
2. If the dispute cannot thus be settled within six months following the date on which either Contracting Party requested such negotiations, it shall at 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 the 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 who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four months from the date of appointment of the other two members.
4. If the necessary 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 is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority in office who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.

## **Article 11. Permits**

1. Each Contracting Party shall, subject to its laws and regulations, examine in good faith the applications relating to investments and grant without delay the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.

2. Each Contracting Party shall, subject to its laws and regulations, permit entry and temporary stay of natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party.

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

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

2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

## **Article 13. Application of the Agreement**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any investment dispute that arose or any claim that was settled before its entry into force.

## **Article 14. Transparency**

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

## **Article 15. Consultations**

The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the application of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through diplomatic channels.

## **Article 16. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other in writing, through diplomatic channels, when their legal requirements necessary for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.
2. This Agreement shall remain in force for a period of ten years and shall thereafter remain in force for further periods of ten years until either Contracting Party notifies the other Contracting Party in writing of its intention to terminate the Agreement in twelve months.
3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 15 shall remain in force for a further period of ten years from the date of termination of this Agreement.

Done in duplicate at New York on 24 September 2009 in the Estonian, Vietnamese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF ESTONIA

Urmas Paet

Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Pham Gia Khiem

Deputy Prime Minister and Minister of Foreign Affairs