

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM AND THE GOVERNMENT OF THE SLOVAK REPUBLIC FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favorable conditions for investments of investors of one Contracting Party in the territory of the State of other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates business initiatives in this field.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of assets invested in connection with business and economic activities by an investor of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and shall include, in particular, though not exclusively:

- a) Movable and immovable property and any other property rights such as mortgages, liens, leases or pledges;
- b) Shares in companies, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;
- c) Claims to money or to any performance under contract having an economic value;
- d) Intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, geographical indications as well as technical processes, trade secrets and know-how, and goodwill associated with an investment; and
- e) Business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

For greater certainty, an investment is not constituted by claims to money solely deriving from:

- i) Commercial contracts for the sale of goods or services by a natural person or legal person in the territory of the State of a Contracting Party to a legal person in the territory of the State of the other Contracting Party; or
- ii) The extension of credit in connection with a commercial transaction, such as trade financing; or
- iii) Any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (e) above.

Any change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment.

2. The term "returns" mean the amounts yielded by investments and, in particular, though not exclusively, includes profits, interests, interests related to loans, capital gains, shares, dividends, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

3. The term "investor" means any natural or legal person of one Contracting Party who invest in the territory of the State of the other Contracting Party:

a) The term "natural person" means a natural person having the citizenship of a Contracting Party in accordance with its laws and not having the citizenship of the other Contracting Party; and

b) The term "legal person" means any entity, which is incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and which has its registered office, central administration or principal place of business in the territory of the State of that Contracting Party. However, should such a legal person have only its registered office in the territory of the State of one of the Contracting Parties, its operations must possess a real and continuous link with the economy of the State of that Contracting Party.

4. The term "Territory" means:

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 Slovak Republic, the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law.

5. The term "Freely convertible currency" means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

6. The term "Public purpose" means as established under the national legislation of each of the Contracting Parties.

## **Article 2. Scope**

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

2. This Agreement shall not apply to the disputes or claims arising before its entry into force.

3. This Agreement shall not apply to:

a) Taxation;

b) Government procurement;

c) Subsidies or grants provided by a Contracting Party; and

d) Services supplied in the exercise of governmental authority by the relevant body or authority of a Contracting Party. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

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

1. Each Contracting Party shall encourage and create favorable conditions for investors of the other Contracting Party to make investments in the territory of the State of the former Contracting Party and, shall admit such investments in accordance with its laws and regulations.

2. Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the State of other Contracting Party. Each Contracting Party shall refrain from impairing by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

3. When a Contracting Party have admitted an investment in the territory of its State, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of nationality.

4. The Agreement shall apply to investments approved by the competent authority of the host Contracting Party. With respect to the Socialist Republic of Viet Nam, competent authority shall be the Ministry of Planning and Investment; or the People's Committee at provincial level; or provincial management committees of industrial zones, export processing zones,

high-tech zones and economic zones; or any other authority which may succeed these agencies or any other authority which may be designated as investment or business licensing authority.

## **Article 4. National and Most-favored-nation Treatment**

1. Each Contracting Party shall accord to investments by investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments in the territory of its State, treatment not less favorable than that which it accords, in like circumstances, to investments of its own investors or to investments of investors of any third State, whichever is more favorable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments in the territory of its State, treatment not less favorable than that which it accords, in like circumstances, to its own investors or to investors of any third State, whichever is more favorable.

3. Notwithstanding paragraphs 1 and 2 of this Article, the Government of the Socialist Republic of Viet Nam may apply exceptions to the principle of national treatment, in accordance with its legislation and within the framework of its development policy.

4. The provisions of paragraphs 1 and 2 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) Its participation in any existing or future customs union, monetary and economic union, free trade zone, or any other regional economic integration agreement or other international agreement which one of the Contracting Parties is or may become a party; or

b) Any international agreement or arrangement or any domestic legislation relating wholly or mainly to taxation; or

c) A multilateral convention or treaty related to investments, of which one of the Contracting Parties is or may become a party.

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

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

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the State of the other Contracting Party resulting from:

a) Requisitioning of their property by forces or authorities of the other Contracting Party; or

b) Destruction of their property by forces or authorities of the other Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation in no less favorable than that, which would be accorded under the same circumstances to an investor of the other Contracting Party or to an investor of any other State.

## **Article 6. Expropriation**

1. Investments of investors of one Contracting Party shall not be nationalized, expropriated in the territory of the State 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.

3. Notwithstanding paragraph 1 and 2 above, with respect to the Socialist Republic of Viet Nam, any measure of expropriation relating to land shall be subject to its laws and regulations 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 a judicial or other independent authority of the other Contracting Party, 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. 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. Transfers**

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to investors of the other Contracting Party, and after fulfillment of their financial obligations, the free transfer of their payments related to investments. Such transfers shall include in particular, though not exclusively:

- a) Returns;
- b) Amounts required for the payment of expenses, which arise from the operation of the investment, such as loan repayments, payments of import letter of credit, advance payment or other similar expenses;
- c) Compensation payable pursuant to Articles 5 and 6;
- d) Proceeds from the sale or liquidation of all or any part of an investment;
- e) Unspent earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;
- f) Additional funds to establish, maintain, develop or increase the investment.

2. The transfers shall be effected without undue delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer, and in accordance with any procedures or formalities applicable in the host Contracting Party.

3. Notwithstanding paragraphs (1) and (2) above, a Contracting Party may adopt or maintain measures relating to cross-border capital and payment transactions through equitable, non-discriminatory and good faith application of its laws relating to:

- a) Adoption of safeguard measures, for a reasonable period of time, which may be taken in exceptional circumstances such as serious macroeconomic difficulties or serious difficulties in the balance of payments of the host Contracting Party;
- b) Implementation of any obligation which is binding on that Contracting Party by virtue of its membership to any customs union, economic and monetary union, common market, free trade agreement or regional economic organization;
- c) Bankruptcy, insolvency, or the protection of the rights of creditors;
- d) Issuing, trading, or dealing in securities, futures, options, or derivatives;
- e) Criminal or penal offences and the recovery of the proceeds of crime;
- f) Financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- g) Ensuring compliance with orders or judgments in judicial or administrative proceedings;
- h) Social security, public retirement, or compulsory savings schemes; and
- i) Severance entitlements of employees.

4. Measures referred to in paragraph (3)(a) and (3)(b) of this Article:

- a) Shall be equitable, neither arbitrary nor unjustifiably discriminatory and applied in good faith;
- b) Shall be temporary and shall be eliminated as soon as conditions permit;
- c) Shall be promptly notified to the other Contracting Party;
- d) Shall be consistent with the Articles of Agreement of the International Monetary Fund; and

e) May not go beyond what is necessary to remedy macroeconomic difficulties or the balance of payments situation set forth in the paragraph 3, subparagraphs a) and b) of this Article.

## **Article 8. Subrogation**

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee or a contract of insurance against non-commercial risks it has entered into in respect of an investment in the territory of the State of other Contracting Party, the latter Contracting Party shall recognize:

- a) The assignment of any rights or claims from investors to the former Contracting Party or its designated agency; and
- b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights of and enforce the claims of those investors.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

## **Article 9. Settlement of Investment Disputes between**

A Contracting Party and

An Investor of the other Contracting Party

1. Dispute between an investor of one Contracting Party and other Contracting Party concerning alleged breach of obligations of the latter Contracting Party under this Agreement which causes loss or damage to investment of that investor shall, as far as possible, be settled amicably through negotiations and consultations between the parties to the dispute.

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;
- 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
- d) An ad hoc arbitral tribunal which, unless 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).

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 to arbitration under paragraph 2 shall be conditional upon the submission of the dispute to such arbitration taking place within two (2) years from the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement and, of the loss or damage incurred by the disputing investor or its investment.

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 in whose 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. Neither Contracting Party shall have the right to make counter claim, as a defense, at any stage of arbitration or within the execution of arbitration decision for the reason that the investor of the other Contracting Party in the dispute has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

6. 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 State's territory the award is relied upon.

## **Article 10. Settlement of 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 consultations, through diplomatic channels.
2. If the dispute cannot be thus settled within six (6) months from the date of the request for consultation, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Arbitral Tribunal. These two members shall then select a national of a third State who, on approval of the two Contracting Parties, shall be appointed Chairman of the Arbitral Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made by either Contracting Party to the President of the International Court of Justice to make the appointments. 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 the appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.
5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties.

## **Article 11. Application of other Rules**

If the legislation of either Contracting Party or obligations under international agreements to which both Contracting Party are or may become 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 12. Essential Security Interests**

1. Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests:
  - a) Relating to criminal or penal offences;
  - b) Relating to traffic in arms, ammunition and implements of war and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;
  - c) Taken in time of war or other emergency in international relations;
  - d) Relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
  - e) In pursuance of its obligations under the United Nation Charter for the maintenance of international peace and security;
  - f) The protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - g) The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - h) Ensuring the integrity and stability of a financial system of one of the Contracting Parties.
2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party or a disguised investment restriction, nothing in this Agreement shall be construed as preventing the Contracting Parties from taking any measure necessary for the maintenance of public order.

## **Article 13. Denial of Benefits**

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of such other Contracting Party and to its investments, if the operations of such enterprise does not possess real and continuous link with the economy of the other Contracting Party.

## **Article 14. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force ninety (90) days after the date on which the Contracting Parties have exchanged written notifications, through diplomatic channels, informing each other that the procedures required by their respective laws for its entry into force have been completed.
2. This Agreement may be amended by mutual consent of the Contracting Parties. Amendments shall be made through the exchange of notes or signing of an amendment agreement. Such amendment shall constitute an integral part of this Agreement.
3. This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given notice of termination to the other Contracting Party.
4. In respect of investments made prior to the date of the termination of this Agreement the provisions of Articles 1 to 13 shall continue to be effective for a period of ten (10) years from the date of its termination unless the Contracting Parties decide otherwise.

IN WITNESS WHEREOF, the undersigned duly authorized thereto, have signed this Agreement.

DONE in duplicate at Bratislava on the 17th day of December, 2009 in the Vietnamese, Slovak and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For the Government of the Socialist Republic of Viet Nam Deputy Prime Minister Minister of Foreign Affairs Pham Gia Khiem

For the Government of the Slovak Republic Minister of Foreign Affairs Miroslav Lajčák