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Agreement Nr ASIE/VN/2003/005-885

FINANCING AGREEMENT

between

THE EUROPEAN COMMUNITY

and

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

"Vietnam Private Sector Support Programme"

FINANCING AGREEMENT

Special Conditions

The European Community, hereinafter referred to as **"the Community"**, represented by the Commission of the European Communities, hereinafter referred to as **"the Commission"**,

of the one part, and

the Government of the Socialist Republic of Vietnam, represented by the Ministry of Planning and Investment, hereinafter referred to as **"the Beneficiary"**,

of the other part,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - NATURE AND PURPOSE OF THE OPERATION

1.1. The Community shall contribute to the financing of the following programme:

Vietnam Private Sector Support Programme
ASIE/2003/005-885

hereinafter referred to as "the programme", which is described in the Technical and Administrative Provisions in Annex II.

1.2 This programme will be implemented in accordance with the financing agreement and the annexes thereto: the General Conditions (Annex I) and the Technical and Administrative Provisions (Annex II).

ARTICLE 2 – THE COMMUNITY'S FINANCIAL CONTRIBUTION

2.1 The total cost of the programme is estimated at 11.145.000 € euro.

2.2 The Community undertakes to finance a maximum of 9.050.000 € euro. The breakdown of the Community's financial contribution into budget headings is shown in the budget included in the Technical and Administrative Provisions in Annex II.

ARTICLE 3 - THE BENEFICIARY'S CONTRIBUTION

3.1 The Beneficiary shall contribute 2.095.000 euro to the programme.

3.2 Where some of the Beneficiary's contribution is not financial, the detailed arrangements shall be set out in the Technical and Administrative Provisions in Annex II to the financing agreement.

ARTICLE 4 – PERIOD OF EXECUTION

The period of execution of the financing agreement shall commence on the entry into force of the financing agreement and end at 31/12/2010. This period of execution shall comprise two phases: an operational implementation phase, which shall commence on the entry into force of the financing agreement and end at 31/12/2008. As from this date shall commence the closure phase, which shall end at the end of the period of execution.

ARTICLE 5 - DEADLINE FOR THE SIGNATURE OF THE CONTRACTS IMPLEMENTING THE FINANCING AGREEMENT

Contracts implementing the financing agreement shall be signed by 8/12/2006 at the latest. That deadline may not be extended.

ARTICLE 6 – CRITERIA TO BE SATISFIED BY THE BENEFICIARY

6.1 The tasks set out in the Technical and Administrative Provisions in Annex II are entrusted to the Beneficiary.

6.2 Accordingly, in so far as the corresponding implementing tasks have been entrusted to it, the Beneficiary undertakes to guarantee during the period of execution of the financing agreement referred to in Article 4 of these Special Conditions the maintenance of a system of managing the Community funds which satisfies the following criteria:

- effective segregation of the duties of authorising officer and accounting officer;
- existence of an effective system for internal control for decentralised management operations;
- for project support, procedures for the presentation of separate accounts showing the use made of Community funds;
- existence of a national institution for independent external auditing;
- procurement procedures referred to in Article 7 of the General Conditions.

6.3 The procedures of the system of management of Community funds by the Beneficiary, which have been the subject of a prior audit by the Commission, shall be documented and remain accessible to the Commission, which reserves the right to carry out documentary and on-the-spot checks to ensure that the criteria set out in this Article are respected during the period of execution of the financing agreement. The Commission must be informed of any substantial changes affecting these procedures.

6.4 Where appropriate, the Technical and Administrative Provisions in Annex II will set out the adversarial clearance-of-accounts procedure and set up financial correction mechanisms, in particular as regards recovery by means of offsetting.

ARTICLE 7 - ADDRESSES

All communications concerning the implementation of the financing agreement shall be in writing, refer expressly to the programme and be sent to the following addresses:

a) **for the Commission**

The Delegation of the European Commission to Vietnam
Suite 703, Metropole Center
56 Ly Thai To Street
Hanoi

b) **for the Beneficiary**

Ministry of Planning and Investment
2 Hoang Van Thu street
Hanoi - Vietnam

ARTICLE 8 - ANNEXES

8.1 The following documents shall be annexed to this agreement and form an integral part thereof:

Annex I: General Conditions

Annex II: Technical and Administrative Provisions.

8.2 In the event of a conflict between the provisions of the Annexes and those of the Special Conditions of the financing agreement, the provisions of the Special Conditions shall take precedence. In the event of a conflict between the provisions of Annex I and those of Annex II, the provisions of Annex I shall take precedence.

ARTICLE 9 - OTHER SPECIAL CONDITIONS APPLYING TO THE PROGRAMME

9.1 Following the establishment of the Programme Task Force by the Beneficiary, the transfer of funds for decentralised payments under the programme can be done only on the basis of a positive assessment by the Commission of the compliance with the Technical and Administrative Provisions in Annex II with regard to the segregation of duties of the Authorising Officer and Accounting Officer, the internal control and the procedures for the presentation of separate accounts showing the use made of Community funds.

9.2 When the criteria for decentralisation agreed in the financing agreement (ref: article 6.2) are no longer met, the Commission may decide to undertake the management of the operations concerned in a centralised manner. This decision should be made by the relevant geographical Director in EC Headquarters.

ARTICLE 10 – ENTRY INTO FORCE OF THE FINANCING AGREEMENT

The financing agreement shall enter into force on the date on which it is signed by the last party.

Done at Brussels and Hanoi in three original copies in the English language, two copies being handed to the Commission and one to the Beneficiary.

FOR THE COMMISSION

Erich W. Muller
Director
Asia Directorate
EuropeAid Cooperation Office

Signature

Date: 24/05/2004

FOR THE BENEFICIARY

Mr Vo Hong Phuc
Minister
Ministry of Planning and Investment

Signature

Date:

ANNEX I - GENERAL CONDITIONS

TITLE I - PROJECT/PROGRAMME FINANCING

ARTICLE 1 – GENERAL PRINCIPLE

1.1 The Community's financial contribution shall be limited to the amount specified in the financing agreement.

1.2 The provision of the Community financing shall be subject to fulfilment of the Beneficiary's obligations under this financing agreement.

ARTICLE 2 - COST OVERRUNS AND COVERING THEM

2.1 Individual overruns of the budget headings of the financing agreement shall be dealt with by reallocating funds within the overall budget, in accordance with Article 20 of these General Conditions.

2.2 Wherever there is a risk of overrunning the global amount set in the financing agreement, the Beneficiary shall immediately inform the Commission and seek its prior approval for the corrective measures planned to cover the overrun, proposing either to scale down the project/programme or to draw on its own or other non-Community resources.

2.3 If the project/programme cannot be scaled down, or if the overrun cannot be covered either by the Beneficiary's own resources or other resources, the Commission may, exceptionally, at the Beneficiary's duly substantiated request, grant additional Community financing. Should it so agree, the excess costs shall be financed, without prejudice to the relevant Community rules and procedures, by the release of an additional financial contribution to be set by the Commission.

TITLE II - IMPLEMENTATION

ARTICLE 3 – GENERAL PRINCIPLE

3.1 The project/programme shall be implemented under the responsibility of the Beneficiary with the approval of the Commission.

3.2 The Commission shall be represented in the State of the Beneficiary by its Head of Delegation.

MAY 2003

ARTICLE 4 - PERIOD OF EXECUTION

4.1 The financing agreement shall lay down a period of execution, which shall commence on the entry into force of the financing agreement and end on the date specified to this end in Article 4 of the Special Conditions.

4.2 This period of execution shall comprise two phases:

- an operational implementation phase, in which the principal activities are carried out. This phase shall commence on the entry into force of the financing agreement and end at the latest 24 months before the end of the period of execution;

- a closure phase, during which final audits and evaluation are carried out and contracts for the implementation of the financing agreement are technically and financially closed. This phase shall commence on the date of end of the operational implementation phase and end at the latest 24 months after this date.

4.3 Costs related to the principal activities shall be eligible for Community financing only if they have been incurred during the operational implementation phase. Costs related to final audits and evaluation and closure activities shall be eligible up to the end of the closure phase.

4.4 Any balance remaining from the Community contribution will be automatically cancelled six months after the end of the period of execution.

4.5 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the operational implementation phase and approved by the Commission before that latter date.

4.6 In exceptional and duly substantiated cases, and after the end of the operational implementation phase, a request may be made for the extension of the closure phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the closure phase and approved by the Commission before that latter date.

ARTICLE 5 - DISBURSEMENT

5.1 The Commission shall transfer funds no later than 45 calendar days after the date on which it registers an admissible payment request from the Beneficiary. The payment request is not admissible if at least one essential requirement is not met. The time limit for payments may be suspended by the Commission by informing the Beneficiary, at any time during the period referred to above, that the payment request can not be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the Commission which puts in doubt the eligibility of expenditure appearing in a payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an

on-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The Commission shall inform the Beneficiary as soon as possible.

5.2 The Commission shall make payments to the bank account or subaccount indicated on the financial identification form included in the Technical and Administrative Provisions in Annex II. Changes of bank account must be reported using the same financial identification form. The Beneficiary shall guarantee that funds paid by the Commission by way of pre-financing can be identified in this bank account or subaccount.

5.3 This bank account or subaccount shall be denominated in euro and be opened jointly in the name of the Beneficiary at a financial institution approved by the Commission in the State of the Beneficiary.

5.4 This bank account or subaccount shall be endowed to meet actual cash requirements and when required by the reports submitted by the Beneficiary, in accordance with the arrangements laid down in the Technical and Administrative Provisions in Annex II. Transfers in euro shall, if necessary, be converted into the Beneficiary's national currency as and when payments have to be made by the Beneficiary, at the bank rate in force on the day of payment by the Beneficiary or, failing that, the rate stipulated in the Special Conditions.

5.5 The Beneficiary shall notify the Commission of any interest or equivalent benefits yielded by those funds at least once a year and when requests are made for interim payments that clear the pre-financing, and it shall provide an aggregate report six months after the end of the closure phase.

5.6 Any interest or equivalent benefits shall be repaid to the Commission within 45 days of receipt of the Commission's request.

ARTICLE 6 – DEADLINE FOR PAYMENTS BY THE COMMISSION IN THE CASE OF DECENTRALISED MANAGEMENT

6.1 When the Commission is making payments, the Beneficiary shall undertake to provide the Commission with the contractor's requests for payment no more than 15 calendar days after registering an admissible payment request. The Beneficiary shall notify the Commission of the date of registration of this request. The payment request is not admissible if at least one essential requirement is not met. The time limit for payments may be suspended by the Commission by informing the Beneficiary, at any time during the period referred to above, that the payment request can not be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the Commission which puts in doubt the eligibility of expenditure appearing in a payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The Commission shall inform the Beneficiary as soon as possible.

6.2 The deadline referred to in paragraph 1 shall also apply when payment is conditional on approval of a report. In this case, the request for payment shall not be

considered admissible until the Beneficiary has approved the report, either expressly, by notifying the contractor, or tacitly, by allowing the contractual deadline for approval to expire without sending the contractor a document formally suspending that deadline. The Beneficiary shall notify the Commission of the date of approval of the report.

6.3 In the event of any delay in forwarding payment requests attributable to the Beneficiary, the Commission shall not be obliged to pay the contractor the late-payment interest provided for in contracts, which will be payable by the Beneficiary.

TITLE III - AWARD OF CONTRACTS AND GRANTS

ARTICLE 7 – GENERAL PRINCIPLE

All contracts implementing the financing agreement must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

ARTICLE 8 - DEADLINE FOR THE SIGNATURE OF THE CONTRACTS IMPLEMENTING THE FINANCING AGREEMENT

8.1 The contracts implementing the financing agreement shall be signed by both parties within three years of the adoption of the budgetary commitment by the Commission, namely at the latest on the date referred to in Article 5 of the Special Conditions. That deadline may not be extended.

8.2 The above provision shall not apply to audit and evaluation contracts, which may be signed later.

8.3 On the date referred to in Article 5 of the Special Conditions, any balance for which contracts have not been signed will be cancelled.

8.4 A contract which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding cancelled.

ARTICLE 9 - ELIGIBILITY

9.1 Participation in invitations to tender for works, supply or service contracts shall be open on equal terms to all natural and legal persons of the Member States of the Community and, in accordance with the specific provisions in the basic acts governing the cooperation sector concerned, to all natural and legal persons of the beneficiary third countries or of any other third country expressly mentioned in those acts.

9.2 Participation in calls for proposals shall be open on equal terms to all legal persons of the Member States of the Community and, in accordance with the specific provisions in the basic acts governing the cooperation sector concerned, to all natural and

legal persons of the beneficiary third countries or of any other third country expressly mentioned in those acts.

9.3 Exceptionally, in duly substantiated cases approved by the Commission, it may be decided, on the basis of the specific conditions laid down in the basic acts governing the cooperation sector concerned, to allow third-country nationals other than those referred to in paragraphs 1 and 2 to tender for contracts.

9.4 Goods and supplies financed by the Community and necessary for the performance of works, supply and service contracts and procurement procedures launched by the grant beneficiaries for the execution of the action financed must originate in countries eligible to participate on the terms laid down in the previous three paragraphs.

9.5 This nationality rule shall also apply to the experts proposed by service providers taking part in tender procedures or service contracts financed by the Community.

TITLE IV - RULES APPLICABLE TO THE PERFORMANCE OF CONTRACTS

ARTICLE 10 - ESTABLISHMENT AND RIGHT OF RESIDENCE

10.1 Where justified by the nature of the contract, natural and legal persons participating in invitations to tender for works, supply or service contracts shall enjoy a provisional right of establishment and residence in the Beneficiary's country. This right shall remain valid for one month after the contract is awarded.

10.2 Contractors (including the grant beneficiaries) and natural persons whose services are required for the performance of the contract and members of their family shall enjoy similar rights during the implementation of the project/programme.

ARTICLE 11 - TAX AND CUSTOMS PROVISIONS

11.1 Save where otherwise provided in the Special Conditions, taxes, duties or other charges (including value added tax - VAT - or equivalent taxes) shall be excluded from Community financing.

11.2 The State of the Beneficiary shall apply to procurement contracts and grants financed by the Community the most favoured tax and customs arrangements applied to States or international development organisations with which it has relations.

11.3 Where the Framework Agreement or exchange of letters applicable includes more detailed provisions on this subject, they shall apply as well.

ARTICLE 12 - FOREIGN EXCHANGE ARRANGEMENTS

12.1 The State of the Beneficiary undertakes to authorise the import or purchase of the foreign currency necessary for the implementation of the project. It also undertakes to apply its national foreign exchange regulations in a non-discriminatory manner to the contractors allowed to participate referred to in Article 9 of these General Conditions.

12.2 Where the Framework Agreement or exchange of letters applicable includes more detailed provisions on this subject, they shall apply as well.

ARTICLE 13 – USE OF DATA FROM STUDIES

Where the financing agreement involves the financing of a study, the contract related to this study, signed for the implementation of the financing agreement, shall govern the ownership of that study and the right for the Beneficiary and the Commission to use data in the study, to publish it or to disclose it to third parties.

ARTICLE 14 - ALLOCATIONS OF AMOUNTS RECOVERED UNDER CONTRACTS

14.1 Amounts recovered from payments wrongly effected, from guarantees of pre-financing payments or from performance guarantees supplied on the basis of contracts financed under this financing agreement, shall be allocated to the project/programme.

14.2 The financial penalties imposed by the contracting authority on candidate or tenderer who is in a case of exclusion in the context of a procurement contract, the calling upon of tender guarantees, as well as the damages granted to the Commission shall be repaid to the general budget of the European Communities.

ARTICLE 15 - FINANCIAL CLAIMS UNDER CONTRACTS

The Beneficiary undertakes to confer with the Commission before taking any decision concerning a request for compensation made by a contractor and considered by the Beneficiary to be justified in whole or in part. The financial consequences may be borne by the Community only where the Commission has given its prior approval. Such prior approval is also required for any use of funds committed under the present financing agreement to cover costs arising from disputes relating to contracts.

TITLE V - GENERAL AND FINAL PROVISIONS

ARTICLE 16 – VISIBILITY

16.1 Every project/programme financed by the Community shall be the subject of appropriate communication and information operations. These operations shall be defined under the responsibility of the Beneficiary with the approval of the Commission.

16.2 These communication and information operations must follow the rules laid down and published by the Commission for the visibility of external operations in force at the time of the operations.

ARTICLE 17 – PREVENTION OF IRREGULARITIES, FRAUD AND CORRUPTION

17.1 The Beneficiary undertakes to check regularly that the operations financed with the Community funds have been properly implemented. It shall take appropriate measures to prevent irregularities and fraud and, if necessary, bring prosecutions to recover funds wrongly paid.

17.2 "Irregularity" shall mean any infringement of the financing agreement, implementing contracts or Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the European Communities, or by an unjustified item of expenditure.
"Fraud" shall mean any intentional act or omission concerning:
- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by them, or on their behalf;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they are originally granted.

The Beneficiary shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities or fraud and of any measure taken to deal with them.

17.3 The Beneficiary undertakes to take every appropriate measure to remedy any practices of active or passive corruption whatsoever at any stage of the procedure for the award of contracts or grants or in the implementation of the related contracts. "Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in

accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the financial interests of the European Communities. "Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the financial interests of the European Communities.

ARTICLE 18 - VERIFICATIONS AND CHECKS BY THE COMMISSION, THE EUROPEAN ANTI-FRAUD OFFICE (OLAF) AND THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

18.1 The Beneficiary agrees to the Commission, OLAF and the Court of Auditors of the European Communities conducting documentary and on-the-spot checks on the use made of Community funding under the financing agreement (including procedures for the award of contracts and grants) and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the project/programme, throughout the duration of the agreement and for seven years after the date of the last payment.

18.2 The Beneficiary also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by Community law for the protection of the financial interests of the European Communities against fraud and other irregularities.

18.3 To that end, the Beneficiary undertakes to grant officials of the Commission, OLAF and the Court of Auditors of the European Communities and their authorised agents access to sites and premises at which operations financed under the financing agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the European Commission, OLAF and the Court of Auditors of the European Communities shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Beneficiary being bound to inform the Commission, OLAF or the Court of Auditors of the European Communities of the exact location at which they are kept.

18.4 The checks and audits described above shall also apply to contractors and subcontractors who have received Community funding.

18.5 The Beneficiary shall be notified of on-the-spot missions by agents appointed by the Commission, OLAF or the Court of Auditors.

ARTICLE 19 – CONSULTATION BETWEEN THE COMMISSION AND THE BENEFICIARY

19.1 The Beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this financing agreement further.

19.2 The consultation may lead to the amendment, suspension or termination of the financing agreement.

ARTICLE 20 – AMENDMENT OF THE FINANCING AGREEMENT

20.1 Any amendment to the Special Conditions and Annex II to the financing agreement shall be made in writing and be the subject of an addendum.

20.2 If the request for an amendment comes from the Beneficiary, the latter shall submit that request to the Commission at least three months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Beneficiary and accepted by the Commission.

20.3 For technical adjustments which do not affect the objectives and results of the project/programme and alterations in matters of detail which do not affect the technical solution adopted, and with no reallocation of funds, the Beneficiary shall inform the Commission of the amendment and its justification in writing as soon as possible and apply that amendment.

20.4 The use of contingency funds shall be subject to the Commission's prior written approval.

20.5 The specific cases of the extension of the operational implementation phase or closure phase are governed by Article 4(5) and (6) of these General Conditions.

ARTICLE 21 – SUSPENSION OF THE FINANCING AGREEMENT

21.1 The financing agreement may be suspended in the following cases:

(a) The Commission may suspend the implementation of the financing agreement if the Beneficiary breaches an obligation under the financing agreement, and notably if, in so far as the corresponding implementing tasks have been entrusted to it, it ceases to satisfy the criteria laid down in Article 6 of the Special Conditions.

(b) The Commission may suspend the financing agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.

(c) The financing agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the partie's control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their

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contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by force majeure. A party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.

21.2 No prior notice shall be given of the suspension decision. As a precautionary measure, payments referred to in Article 5.1 of these General Conditions shall be suspended.

21.3 When the suspension is notified, the consequences on the ongoing contracts or contracts to be signed will be indicated.

ARTICLE 22 – TERMINATION OF THE FINANCING AGREEMENT

22.1. If the issues which led to the suspension of the financing agreement have not been resolved within a maximum period of four months, either party may terminate the financing agreement at two months' notice.

22.2. Where a financing agreement has not given rise to any payment within three years of its signature or no implementing contract has been signed by the date referred to in Article 5 of the Special Conditions, that financing agreement will automatically be terminated.

22.3 When the termination is notified, the consequences on the ongoing contracts or contracts to be signed will be indicated.

ARTICLE 23 - DISPUTE-SETTLEMENT ARRANGEMENTS

23.1 Any dispute concerning the financing agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 19 of these General Conditions may be settled by arbitration at one of the parties' request.

23.2 In this case the parties shall each designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.

23.3 Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.

23.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.

ANNEX II: Technical and Administrative Provisions (decentralised ex-ante procedures)

Beneficiary:	**VIETNAM**
Title:	**Vietnam Private Sector Support Programme**
Project No:	**Asie/VIET/2003/005-885**

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1 OBJECTIVES

1.1 Overall Objective

- The global objective of the Vietnam Private Sector Support Programme (VPSSP) is poverty alleviation and job creation via promotion of the private sector, in particular of Vietnamese small and medium enterprises (SME), and its integration into the international economy.

1.2 Programme Purpose

- The Programme purpose is to strengthen the administrative capacity and operational effectiveness of SME-related local government structures and private sector associations, fostering SME's development, in line with the reform process leading towards a market-oriented economy in Vietnam.

1.3 Main Results

The expected results are:

- Improved administrative and regulatory environment for SME development at Provincial level (nine provinces targeted)
- Improved public-private sector dialogue conducive to SME development
- Enhanced capacity of business associations to represent private sector interests needs and increased availability of business support services for SME's at Provincial level
- Creation of new enterprises facilitated through the establishment of replicable business-technology incubators in selected sectors (Food processing in Hanoi and Information technologies in Ho Chi Minh City)

2. PROGRAMME DESCRIPTION AND ACTIVITIES

Vietnam's economy is on the path of sustainable and equitable growth and has good prospects to achieve the National Target Programme on Hunger Eradication and Poverty Reduction and Employment (HEPR), in line with the Millennium Development Goals. Over the last decade, the economy almost doubled and the poverty declined by half.

The driving force underlying this strong growth is the private sector. Vietnam is decisively moving towards a socialist market-oriented economy and has recently made an impressive number of commitments to improve the overall business climate. The National Assembly approved changes to the Constitution making the private sector a key pillar of the economy, and confidence in the private sector has substantially improved since the adoption in January 2000 of the new Enterprise Law and the November 2001 Decree concerning the development of SME. Enterprise creation has increased continuously since the beginning of 2000 with an average pace of 1600 new companies per month. Private enterprises are particularly dynamic and saw their role in the economy steadily growing, representing in 2002 nearly 30% of total new investment. Also impressive is the growth in

private industrial output, which according to World Bank estimates posted rates of 19.2% in 2000, 20.3% in 2001, and 19.3% in 2002, and with employment growth of about 30% per year.

However, the relative size of the private sector remains limited, representing only 8% of the GDP and 3% of total employment, and, therefore, Vietnam must do more to accelerate private SME growth to attain its development objectives. Furthermore, growth is unbalanced between regions and sectors, with lower growth observed in the regions of Northern Uplands, Central Highlands, South Central Coast and the Mekong Delta. This situation illustrates the difficulty in aligning central decisions with policy-making and support for SME development at local level and the need to foster the exchange of experiences and spill-over best-practice from the most advanced regions.

In short, the problem analysis reveals that there are several sources of weakness leading to reduced / unbalanced SME development: (1) deficiencies in the capacity of provincial administrations and private sector associations to support the start-up and development of small and medium enterprises; (2) deficiencies in the dialogue between public and private sector and in the capacity to introduce and replicate best administrative practice for SME development; (3) limited access of SME to know-how and sector specific technologies for more innovative and value-added development opportunities.

In light of these issues, the programme activities are intended to:

1. Create an enabling environment conducive to SME development, in particular at provincial level; and
2. Establish pilot business-technology incubators to support the creation of enterprises in selected sectors of industry, with the aim of replicating them thereafter in other locations.

The activities pursued by the programme are in line with the Action Plan adopted by the Government in July 2002 to strongly support private sector development, and with Decree of August 2002 to improve the implementation of the Enterprise Law at provincial level.

Direct beneficiaries of activities under the programme will be Vietnam's provincial and district government officials concerned with administering SME-related regulations, and representatives of business associations and SME-related structures.

Ultimate beneficiary will be the people of Vietnam in particular business owner-managers and employees.

Component 1 – Simplification and strengthening of the SME enabling environment at Provincial level

1/ Support for the administrative and regulatory reform at Provincial level to introduce best local administrative practices will enable business operators in less advanced provinces to benefit from the best enabling environment. Availability of simplified administrative procedures, their publication and enforcement by local officials will ensure that business operators can anticipate the costs of registration, licensing and certification of business activities, compliance with regulations relating to different activities, and the

penalties for non-compliance. This will facilitate investment and growth in less advanced provinces thus contributing to Vietnam's strong emphasis on equitable development. This component will involve supporting Central Government and selected Provincial People's Committees in order to introduce an enabling administrative and regulatory environment and foster replicable best practices at provincial level. All the above will imply the following main elements:

- Identifying bureaucratic and other hindrances to SME development within selected provinces (business regulations and registration, land permits, access to finance, local taxes, bureaucratic inspections, reporting, etc)
- Identifying best practices SME development policies and prepare an Action Plan for creating an enabling environment for private sector growth at provincial level
- Implementing Action Plans in selected provinces and monitoring progress in SME development
- Strengthen co-ordination and monitoring mechanisms at central/provincial level that will facilitate exchange of information and best practice initiatives

2/ The programme also aims to enhance that part of the enabling environment formed by business associations and business development service providers in the selected provinces. Independent, self-sustaining business associations are the best facilitators for SME development. They should provide impartial information, advisory and advocacy services on behalf of their members and act as intermediaries, analysing and promoting their members' interests to government and other service providers, including providers of financial services. Programme support to business associations at provincial level will facilitate the development and competitiveness of SME in the most appropriate sectors and integration in the international economy. This will be achieved by:

- Undertaking a baseline study of business supports services and opportunities available in the market, including: business associations' advisory services, non-financial business development service (BDS) providers and their service products, financial business support service providers and their service products, and the current capacities of market actors
- Reinforcing the capacity of business associations and private sector suppliers at provincial level (eg, management and entrepreneurial training; market research and business information; marketing, quality management and social standards)
- Stimulating the provision of business support services in selected provinces

Component 2 – Creation of new enterprises through the establishing of pilot business-technology incubators in selected sectors of industry

The success of SME depends on their access to know-how and technology at an affordable cost. This may be facilitated by the establishment of business incubators to provide facilities, specialised technical assistance and other non-technical services such as information, marketing, accountancy, secretariat and other common logistic resources. A specific feature of business-technology incubators is the concentration of resources on recently established enterprises with highest potential for growth and innovation. Another important aspect of incubator service is the encouragement of business links and co-operation, which can take several forms, ranging from ad-hoc co-operation for specific

projects, simple letters of intents and formal agreements on co-operation to formalised Joint Ventures. Company co-operation often starts informally and can then develop into more formal co-operation as trust and common markets are developed.

The elements of the programme under this component are two pilot incubators, one operating to facilitate the start-up of enterprises with high potential in the ICT/Software sector (Ho Chi Minh City) and the other in the food processing/packaging sector (Hanoi). The lessons learned from the two pilot incubators experience will serve as basis for the further extension of the concept to other municipalities and provinces, to encourage entrepreneurship and accelerate the creation of enterprises.

2.1 Activities

Component 1 - Simplification and strengthening of the SME enabling environment at Provincial level

- Provision of Technical Assistance for a reduction of inconsistencies between SME development policy formulation at central level and their implementation at local level
- Provision of Technical Assistance to identify and disseminate best practice conducive to SME growth to local stakeholders (9 provinces targeted)
- Provision of Technical Assistance for strengthening capacity amongst business associations and independent business development service (BDS)[1] providers to design and deliver service products appropriate for enterprises at each stage of development – start-up, consolidation, growth and internationalisation
- Support consultative activities from regulatory authorities and facilitate constructive government-private sector dialogue
- Information dissemination for the private sector on all local regulations and how to comply with them
- Raising awareness and consensus on economic development directions and long-term strategies for SME development in provincial and district government constituencies

Component 2 – Establishing of pilot business-technology incubators in selected sectors of industry with the aim to replicate them thereafter in other locations

- Provision of Technical Assistance offering the European experience on business-technology incubators
- Support the start up costs of a business incubator in the sector of Food Processing and Packaging in Hanoi (capable to accommodate about 20 companies)
- Support the start up costs of a business incubator in the sector of Information and Communications Technologies in Ho Chi Minh City (capable to accommodate about 20 companies)
- Dissemination of results and best practice to local stakeholders in particular in other municipalities and provinces

[1] BDS is used here in accordance with the World Bank definition, which excludes financial services for business development

2.2 Time Schedule

The end of the implementation period of the programme is set at 31/12/2008. The end of the execution period is set at 31/12/2010.

All contracts for the implementation of the financing agreement must be signed within three years from the financing decision apart from final evaluation and audit.

The first six months of the programme will include an inception phase to confirm the content and specific locations of each programme component and to draw up a detailed timetable for implementation (Initial Plan of Activities).

The last six months of the programme will be dedicated to phasing out activities and to preparing for the post-programme situation.

2.3 Location

The programme will be implemented in Vietnam throughout the country.

2.4 Logical Framework

The initial Logical Framework for the programme is annexed as Attachment 1. This may be updated or adapted in the Overall Work Plan, to which it will then be annexed, without necessitating an amendment to the Financing Agreement.

3. ADMINISTRATIVE PROVISIONS

3.1 Implementation Modalities

A Financing Agreement between the Government of the Socialist Republic of Vietnam, represented by the Ministry of Planning and Investment (MPI), and the European Commission will be signed for the full amount of the budget commitment. The programme will be implemented following a decentralised management approach with ex-ante control.

3.1.1 Executing Authority

The Executing Authority (EA) for the programme is the Vietnamese Ministry of Planning and Investment, represented by its SME Promotion Agency. The MPI will also be the contracting authority under the terms laid out under paragraph 3.4 and for 3.5 except for those cases defined therein where the EC will be the contracting authority.

3.1.2 Implementing Agencies

The MPI - SME Promotion Agency, Provincial Departments of MPI (DPIs), Hanoi Peoples Committee and the HCMC Peoples Committee will be Implementing Agencies under the supervision of the Executing Authority.

3.1.3 Programme Steering Committee

(a) The Executing Authority will establish a Programme Steering Committee (PSC) with responsibility for policy guidance and co-ordination between all institutions and groups involved in the programme.

(b) The PSC will meet twice a year and will assist the Executing Authority by providing policy guidance and co-ordination between all Implementing Agencies involved in the programme.

(c) The PSC will review and endorse the Programme Task Force's (PTF's) six-monthly reports, as well as the policy and strategic implications of Overall and Annual Work Plans and budgets drafted by the PTF before they are sent to the Executing Authority and Commission for final consideration and approval.

(d) Each Implementing Agency will nominate a Director to co-ordinate and facilitate implementation of the activities of the respective programme component.

(e) The PSC will also assist in facilitating overall programme implementation.

(f) The PSC will be chaired by the MPI – SME Promotion Agency and will include a representative of each Implementing Agency. EC representatives will be invited to the PSC meetings as observers with the right to speak. Other relevant stakeholders may also be invited to participate as observers (Private sector representatives, Vietnamese Professional Associations and Chambers of Commerce, European Chamber of Commerce in Vietnam).

3.1.4 Programme Task Force

(a) The MPI - SME Promotion Agency will establish a Programme Task Force (PTF). The PTF will be based in Hanoi within the premises of MPI.

(b) Within the framework of the Work Plans and disbursement schedules approved by the Executing Authority and by the Commission, the PTF will have operational autonomy to cover the technical, administrative, financial and human resources aspects related to programme co-ordination, implementation and management.

(c) The PTF will, in particular, undertake the following tasks:

1. Prepare the Initial Plan of Activities (IPA), the Overall Work Plan and Budget (OWP), and the Annual Work Plans and Budgets (AWP) for the approval of the Executing Authority and the Commission;

2. Ensure the management of all financial, personnel and administrative affairs;

3. Execute the activities as approved by the Executing Authority and by the Commission in accordance with EC procedures;

4. Assist and support implementing staff and beneficiaries with technical and planning know-how;

5. Ensure contribution is delivered as committed;

6. Ensure technical assistance participants can perform their tasks in good working conditions.

3.1.5 Programme Director

(a) The PTF will be headed by a full-time Vietnamese Programme Director appointed by the Executing Authority and endorsed by the Commission. The Programme Director must have confirmed management capacities. The Programme Director will act as Secretary to the PSC.

(b) The Programme Director is fully responsible for the activities of the PTF. The Programme Director is responsible to the Executing Authority for delivering the programme results and for making the most effective and efficient use of resources made available to the programme, irrespective of their nature (human, technical or financial resources) and their origin (local or European).

(c) The Programme Director's responsibilities include:

1. Approving the Work Plans and Budgets to be submitted to the PSC and subsequently to both the Executing Authority and the Commission for approval;

2. Executing the activities, as approved by the Executing Authority and by the Commission, in accordance with EC procedures, including:

- Approving the tender dossiers and calls for proposals dossiers to be submitted to the Commission for approval before being officially launched;

- Signing the contracts to be concluded by the Beneficiary after having submitted them to the Commission for approval;

- Executing payments from the programme account (as foreseen in section 3.5 below) and requesting payments to be processed by the Commission (as foreseen in section 3.5 below) or by the Executing Authority (for the Beneficiary's financial contribution);

- Ensuring that programme activities are well co-ordinated and that necessary pre-conditions are met concerning post-programme ownership, operation, maintenance and sustainability;

- Preparing standardised six-monthly progress reports to monitor all technical, financial and administrative aspects on the utilisation and impact of all resources made available to the programme;

- Preparing and attaching to the final year AWP a proposed blueprint for phasing out programme activities and preparation for the post-programme situation, including the procedures to be adopted for handing over the installations to the respective Implementing Agencies;

- Informing the Executing Authority and the Commission of any event which might jeopardise the success of the programme.

3.1.7 European Technical Assistance Team (ETAT)

(a) A European Technical Assistance Team (ETAT) will assist the beneficiary in the implementation of the programme, including:

1. Technical expertise related to the management, implementation and information dissemination activities of the programme, in particular to:
   - o Define Initial Plan of Activities (IPA)
   - o Identify and deploy technical assistance expertise
   - o Establish Programme Steering Committee
   - o Organise meetings of Programme Steering Committee
   - o Establish group of Programme Component Directors
   - o Draft Overall Work Plans and Budgets (OWP)
   - o Draft Annual Work Plans and Budgets (AWP)
   - o Review Technical and Financial Progress and final Reports
   - o Identify areas of concern and define actions to solve them
   - o Ensure information dissemination by the creation of a Web Site
   - o Ensure visibility of EC support

2. Administrative, preparatory and ancillary tasks relating to planning, monitoring, reporting on programme components, procurement, and financial management. These tasks will involve neither the exercise of public authority nor the use of discretionary power of judgment.

(b) The ETAT will work under terms of reference agreed by both the Executing Authority and the Commission.

(c) The ETAT Team Leader will assist the Programme Director in drafting Work Plans and Budgets, as well as reports. The ETAT Team Leader will verify, before adoption by the national Programme Director the work plans, budgets, the reports, tender dossiers and calls for proposals dossiers, draft contracts, as

well as payment proposals from the programme account. A register of verifications will be maintained at the PTF.

(d) The ETAT Team Leader will report to the Programme Director, but will have the obligation to directly inform the Commission of any problem of any nature as soon as it arises. In any event, the ETAT Team Leader will submit to the Commission a six-monthly progress report. The ETAT Team Leader will attend PSC meetings as an observer with the right to speak.

3.2 Inputs

(a) **Seconded Government Staff** from MPI/DPIs that will consist of the appointment of one full time Programme Director to be based in Hanoi, one Accounting Officer, and nine senior staff (part-time) representing the involved Provincial departments to assist in the co-ordination and planning of activities for the whole duration of the programme.

(b) One **long-term senior European technical expert** will advise the Programme Management on programme implementation activities, policy co-ordination at central level and visibility (approximate estimation of 60 calendar-months x 1 expert type I). Other senior European technical experts will be deployed in the three clusters of provinces to advice in the implementation of the Action Plan for regulatory and administrative reform at local level (approximate estimation of 48 calendar-months x 3 experts type I). Two other long-term senior European technical experts will advice during 3 years in the implementation and running of the Incubators, one in Hanoi and the other HCMN (approximate estimation of 36 calendar-months x 2 experts I).

(c) **Short term European technical assistance** will be needed to provide technical support under the various components of the programme:

- Enabling SME Environment at Provincial level: Provision of specialised SME's development policy advice to local administration and training to business associations (approximate estimation of 45 calendar-months, experts type II).
- Business Incubators: Provision of advice for the setting up and management of two Incubators and provision of training to tenants on enterprise development in the specialised sectors (approximate estimation of 64 calendar-months, experts type II)
- Monitoring and evaluation

(d) Short term **local technical assistance** will be needed under the various components to complement the European Technical Assistance (approximate estimation of 322 calendar-months, experts type II). Provision is also made under the programme budget for local office support staff required for the functioning of the PTF at central and provincial level, to support technical and financial management and ensure the interface with local stakeholders.

(e) **Financial resources** are provided to cover:

- start-up costs of the two Incubators
- supply of computers, software, other office equipment, library, training material
- information activities intended to publicise the programme and raise the visibility of the European Union
- operations of the Programme Task Force (PFT) at central level and in Provinces
- audit
- contingencies.

3.3 Contribution Details

(a) The Beneficiary's contribution will cover a financial contribution of 200,000 euro for start-up costs, supplies and contingency of the Business Incubators and in kind contribution of 1,895,000 euro for the leasing of the premises of the Business Incubators as well as for the costs of the Vietnamese Programme Director, Accounting Officer and other supporting costs from MPI at central and provincial level contributing to the Programme Task Force.

(b) The Beneficiary will cover all costs related to the participation of officials in meetings, workshops and other events as part of the normal functioning of the public services.

(c) The Beneficiary will cover all salaries related to the participation of their staff in the programme, provide appropriate office facilities, including furniture, electricity and communication lines free of charge for European and local experts.

(d) In general, the Beneficiary will cover any programme-related operating costs not included in the EC contribution.

(e) Where EC and the Beneficiary are both providing financial contributions to the same category of activity, the specific actions to be covered by each party will be clearly identified in the Annual Workplan and Budget concerned.

(f) The Beneficiary will be responsible for facilitating constructive and effective co-operation of the concerned Ministries and other public authorities.

3.4 Programme Costs and Financing

The total cost of the programme is estimated at 11,145,000 euro, of which the EC contribution is 9,050,000 euro. The Beneficiary will provide financial contributions of 200,000 euro and in-kind contributions to the counter-value of 1,895,000 Euro.

The tables below summarises the programme budget divided by components

Summary of Programme Costs

COSTS BREAKDOWN	EC	Beneficiary	TOTAL	Contracting Authority
1) COMPONENT 1				
1.1. Services	2,622,000		2,622,000	EC, MPI
1.2. Supplies/Equipment	55,000		55,000	MPI
1.3. Works				
1.4. Operating Costs	358,000	100,000	458,000	MPI
1.5. Information	50,000		50,000	MPI
2) COMPONENT 2				
..1. Services	2,000,000		2,000,000	EC, MPI
2.2. Supplies/Equipment	825,000		825,000	MPI
2.3. Works				
2.4. Operating Costs	690,000	1,900,000	2,590,000	MPI
2.5. Information	50,000		50,000	MPI
3) HORIZONTAL COMPONENT				
3.1. Services	1,560,000		1,560,000	EC, MPI
3.2. Supplies/Equipment	70,000		70,000	MPI
3.3. Works				
3.4. Operating Costs	240,000	95,000	335,000	MPI
3.5. Information	100,000		100,000	MPI
4) CONTINGENCY	430,000		430,000	
)TALS (per cost type)				
1. Services	6,182,000		6,182,000	
2. Supplies/Equipment	950,000		950,000	
3. Works				
4. Operating Costs	1,288,000	2,095,000	3,433,000	
5. Information	200,000		200,000	
6. Contingency	430,000		430,000	
TOTAL	9,050,000	2,095,000	11,145,000	

The breakdown of the budget is indicative and may be adjusted according to need, subject to prior written agreement between the Executing Authority and the Commission. The tendering schedule is reflected in the high level indicative timeline of the programme.

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Component 1 – Enabling SME Environment in Provinces

COSTS BREAKDOWN	Contributor		TOTAL	Contracting Authority
	EC	Vietnam		
1. Services	**2,622,000**		**2,622,000**	
1.1 European TA long term	1,875,000			EC
1.2 European TA short term	585,000			EC
1.3 Local TA short term	162,000			MPI
2. Supplies/Equipment	**55,000**		**55,000**	MPI
2.1 Computers and networking	30,000			MPI
2.2 Software and training material	25,000			MPI
Works				
4. Operating Costs	**358,000**	**100,000**	**458,000**	MPI
4.1 Local support staff (interpreters, legal and enterprise assistants in provinces and local government staff)	108,000	50,000		MPI
4.2 Running office costs in Provinces (rental, communications and other services)	100,000	50,000		MPI
4.3 Other operational costs (local transport, visit tours and other)	150,000			MPI
5. Information	**50,000**		**50,000**	MPI
Total	**3,085,000**	**100,000**	**3,185,000**	

Component 2 – Support the start-up of two Business Incubators

COSTS BREAKDOWN	Contributor		TOTAL	Contracting Authority
	EC	Vietnam		
1. Services	**2,000,000**		**2,000,000**	
1.1 European TA long term	1,006,000			EC
1.2 European TA short-term	964,000			EC
1.4 Local TA short term	30,000			MPI
2. Supplies/Equipment	**825,000**		**825,000**	
2.1 Computers, Software and Networking	200,000			MPI
2 Technical Equipment	525,000			MPI
2.3 Access to laboratories and testing	100,000			MPI
3. Works				
4. Operating Costs	**690,000**	**1,900,000**	**2,590,000**	
4.1 Local Support Staff	144,000	144,000		MPI
4.2 Leasing of premises		1,700,000		MPI
4.3 Other Operational Costs (equipment maintenance, communications, advertising, accounting and legal advice and other)	456,000	56,000		MPI
4.4 Local transport and visit tours	90,000			MPI
5. Information	**50,000**		**50,000**	MPI
tal	**3,565,000**	**1,900,000**	**5,465,000**	

Horizontal (co-ordination) component

COSTS BREAKDOWN	Contributor		TOTAL	Contracting Authority
	EC	Vietnam		
1. Services	**1,560,000**		**1,560,000**	
1.1 ETAT	780,000			EC
1.2 Local TA short term	130,000			MPI
1.3 Monitoring, Evaluation & Audit	650,000			EC
2. Supplies/Equipment	**70,000**		**70,000**	MPI
2.1 Office equipment and networking for PTF	20,000			MPI
2.2 Software and web site construction	50,000			MPI
3. Works				
4. Operating Costs	**240,000**	**95,000**	**335,000**	
4.1 Local support staff (including interpreters, accountant, project co-ordinator assistant and MPI staff)	86,000	40,000		MPI
4.2 Central office operational costs (rental, services, communications)	86,000	55,000		MPI
4.3 Local transport	68,000			MPI
5. Information	**100,000**		**100,000**	MPI
Total	**1,970,000**	**95,000**	**2,065,000**	

Contingency (*)

Contingency	**430,000**			

(*) To be mobilised in priority to Component 1 to reinforce activities in provinces (local services)

3.5 Mobilisation of the Programme Budget

(a) Contractual Modalities

1. Services

1.1. The services of ETAT will be managed through service contracts concluded by the Commission:

a) The long-term advisor for the co-ordination component will be recruited through a restricted international call for tender. If necessary, to bridge the time before the long-term advisor will be able to arrive, the framework contract procedure might be used to provide assistance to the Programme Director.

b) Technical Assistance under components 1 and 2 will be recruited via restricted international call(s) for tender in separate lots. However the use of framework contract procedures in the above components is not excluded.

1.2. The services of LTA will be managed through service contracts foreseen in the Overall and/or Annual Work Plans and Budgets and concluded by the Executing Authority in accordance with EC procedures, after endorsement by the EC.

Local technical assistance includes long and short-term technical personnel hired locally on a temporary basis to assist in the design, implementation and supervision of the programme.

1.3. The contracts for monitoring, evaluation and audits will be managed through service contracts concluded by the Commission.

2. Supplies

Supplies will be managed through supply contracts concluded by the Executing Authority, following the contract award procedure of the Commission.

3. Operating Costs

Operating costs will be managed on the basis of the Overall and/or Annual Work Plans and Budgets. Operating costs will include provisions for the local procurement of services, supplies or works, unless otherwise stipulated in this Financing Agreement.

4. Information

See operating costs.

5. Contingencies

Contingencies can only be used on the basis of a written request by the Programme Director and following the prior written agreement of the Commission.

(b) Financial Modalities

1. EC disbursements for the implementation of the programme will be executed after verification of the conformity of the expenses with the needs established in the work programme and in accordance with the availability of annual budgetary payment appropriations.

2. The Project Director, appointed by the Executing Authority/Implementing Agency, will be the Authorising Officer.

3. The Accounting Officer will be in the Accounting Department of the Executing Authority. He/she will be responsible for the financial management and proper implementation of payments, including acting as co-signatory to the programme account.

4. There will be no hierarchical relation between the Programme Director and the Accounting Officer (neither formal nor practical).

5. Payments shall be made as follows:

   5.1. The Commission shall make the payments for the services of ETAT, the services for monitoring, evaluation and audits, as well as for supplies and works not included in the operating costs.

   5.2. The Beneficiary shall make the payments for the operating costs, as well as for the local services, supplies and works contracts foreseen in the Overall and/or Annual Work Plans and Budgets. EC thresholds for each contract managed on the basis of the AWP must be respected.

      (a) The Beneficiary shall establish for this sole purpose an appropriate interest bearing bank account in Vietnam, denominated in Euro, hereafter referred to as the "programme account". Transfers by the EC into the programme account shall be made in Euro and converted, where necessary, into the currency of the recipient State as and when payments fall due;

      (b) The programme account shall be operated with the joint signatures of the Programme Director and the Accounting Officer. Subordinate accounts will only be opened with the express agreement of the Commission;

(c) Disbursement from the programme account shall be made by the Project Director and the Accounting Officer in line with the programme's requirements and the agreed work plans and budgets;

(d) The Commission shall provide an initial pre-financing of 250.000 Euro following notification of the opening of the programme account and of the identity of the co-signatories in order to cover the local support staff and recurrent costs of starting up the programme as well as the inception phase activities;

(e) The Commission shall, on the basis of the agreed Overall and first year Work Plans and budgets, make a further pre-financing of up to 80 % of the estimated operating costs during the first year of implementation, decreased by the amounts already transferred;

(f) For the second and subsequent years of implementation, the mechanism adopted for the first year is reapplied. However, the 80% pre-financing of the agreed annual operating costs will be adjusted by deducting the actual balance of the previous year.

(g) The Accounting Officer shall, every six months, prepare expenditure reports justifying the use of pre-financing received. These reports will be countersigned by the Authorising Officer. On a six monthly basis these reports shall be submitted for inspection to a qualified firm of external auditors.

(h) Once certified by the external auditors as being in conformity with programme progress, the approved Work Plan and budget, the agreed implementation procedures and generally accepted accounting rules, these six-monthly reports may be the basis of requests by the Programme Director through the Executing Authority to the Commission for the transfer of additional pre-financing (maximum 20%). Such requests shall normally be made every six months and shall include copies of all bank statements for the preceding period.

(i) In case of urgency, duly justified by the Programme Director, the Commission may be requested to make a temporary partial disbursement on the basis of a non-audited request. Any such temporary disbursement will be recovered from subsequent audited requests;

(j) All expenses of the programme covered by the EC grant will be supported by supporting documents such as contracts, bills, receipts and bank statements. Such documents as well as the book accounting and the inventory logbook shall be kept for at least seven years from the last payment. The programme's bookkeeping will be in accordance with the double-entry system and shall include the registration of each receipt and each expense. The accounting results of these books must appear in a general book of the programme, including the interest accounting.

Even if the national legislation does not foresee it, the Commission may request the application of minimum criteria of analytical accounting, according to the nature and the needs of the programme;

(k) Interest generated by the programme account will be accounted for separately;

(l) All funds in the programme account, including any interest generated thereon or other equivalent benefits, shall remain the property of the Commission and as such be repaid to the Commission. Any unused balances remaining available on the termination of the programme shall revert to the Commission.

3.6 Planning and Reporting

(a) Work Plans and reports will be drafted in accordance with EC standard formats. They will include at least:

1. An Initial Plan of Activities (IPA), including activities to be undertaken in the inception phase, to be submitted within one month of arrival of the ETAT Team Leader;

2. The Overall Work Plan and Budget (OWP) as well as the first Annual Work Plan and Budget (AWP) to be submitted within three months of arrival of the ETAT Team Leader. The OWP and the successive AWP will include objectively verifiable indicators for monitoring programme progress;

3. Successive Annual Work Plans and Budgets (AWP);

4. Six-monthly technical and financial progress reports including financial statements for each of the Incubators;

5. Any special reports related to priority issues;

6. A final programme completion report, including a technical and a financial part, the recapitulative situation of the bank account and the status of interests, the complete list of assets, their location and destination, the location of the complete project's archives/documents.

(b) Work plans and reports are deemed approved only when both the Executing Authority and the European Commission have endorsed them in writing.

(c) Except for the initial activities foreseen in the approved IPA, expenditure can only take place following the approval of the OWP and an AWP.

(d) Approval of an AWP may necessitate a revision of the OWP so as to ensure continuous consistency between the AWP and OWP. Any such revisions of the

OWP will be notified in writing to the Executing Authority and the Commission when the AWP is submitted for their approval. In such cases, approval of the AWP will constitute an approval of the revised OWP.

(e) Activities that are not foreseen in an approved Annual Work Plan may only be implemented following prior written authorisation by the Executing Authority and the Commission. Such authorisations will be identified as an amendment to the approved Annual Work Plan and will be annexed thereto.

3.7 Monitoring and Evaluation

(a) Day-to-day technical and financial monitoring will be a continuous process as part of the Programme Director's responsibilities.

(b) Independent consultants recruited directly by the Commission on specifically established terms of reference will carry out external monitoring and final evaluation.

3.8 Audit and Internal Control

(a) A national institution for independent external audit is in existence. The national institution for independent external audit is the Vietnamese State Audit. This programme falls under the remit of the Institution.

(b) The Commission shall, in accordance with EC procurement rules, appoint a reputable external auditor/accountant (i.e. international firm member of an internationally recognised auditing body). The auditor/accountant's role shall include:

1. six-monthly audits of the programme account for submission to the European Commission. The costs thereof will be paid as part of the specific allocation under services;
2. monitoring the segregation of duties between the Authorising Officer and the Accounting Officer.

(c) The internal accounting department of the MPI will ensure internal control of management operations.

3.9 Donor Co-ordination

In order to preserve the necessary coherence between the activities of the present programme and those activities undertaken by other donors in the sector, regular meetings will take place with all interested parties to ensure an open exchange of information, to avoid overlapping of activities and/or financing and to incorporate the lessons learnt by these other actors into the work of the programme.

4. SPECIAL CONDITIONS

(a) The Steering Committee will identify the provinces to benefit from the activities of Component 1 of the programme – Enabling SME environment, in accordance with the following criteria:
1/ The first set of participating provinces[3] should have reached a medium level of development and present a viable platform on which to pilot the first administrative reforms and establish best practices' to be disseminated to other less advanced provinces;
2/ The other participating provinces will be identified taking account of:

- Large scope for reducing poverty and achieving major progress in SME development, in particular in less advanced provinces.
- Good potential to provide opportunities for EU-Vietnamese economic co-operation.
- The capacity to absorb and benefit from EU technical assistance policy advice inputs.
- The willingness of local actors to contribute actively to the determination and dissemination of 'good practice'.
- Provinces where the programme will not duplicate other recent or existing donor activity in the area of activity covered by the programme.

All the participating provinces will be approved by the EC Delegation.

(b) The support to the Incubators should only be released when its statutes are formally adopted, in the form of non-profit entity, and a governing board has been nominated including public-private partnership organisations. The operational budget plan and guidelines for the functioning of the Incubators (including criteria for the entry/exit of companies) will have to be developed by the parties and approved by the EC Delegation.

(c) The EC Delegation will participate as an observer in the selection process of the Director for each Incubator and companies to enter into the Incubators, but with the right to endorse or not the proposed candidates.

(d) The Vietnam Government will grant to the ETAT staff of the programme - and to their families - benefits, privileges and exemptions that are no less favourable than those granted to expatriates under other bilateral or multilateral agreements or arrangements for technical co-operation.

(e) Equipment and vehicles will be purchased locally and/or imported by the programme free of any taxes and duties under the procurement procedures stipulated in this Financing Agreement. These supplies can only be used for activities foreseen in the approved Work Plans. In the interest of the programme's sustainability, equipment and vehicles will be handed over to the appropriate authorities at the end of the Programme on the basis of a detailed proposal prepared by the Programme Director and approved by the Executing Authority and the Commission.

[3] The provinces of *Hai Phong, Da Nang* and *Can Tho* have already been identified and agreed between MPI and the EC as adequate candidates for the first set of participating provinces.

(f) The Executing Authority and the Implementing Agencies will appoint and assign, prior to programme commencement and at an appropriate professional level, the staff required for the implementation of the programme and in particular the Vietnamese Programme Director, the Accounting Officer and Members of the Steering Committee. All of them will be of sufficient competence and seniority. The beneficiaries are also committed to maintaining line staff in their posts for a reasonable time where the programme has invested training and other resources in them.

(g) The Beneficiary Implementing Agencies will invite the EC to take part in meetings with the Government and other international donors, which focus on the co-ordination of programmes being implemented in related fields.

Attachment 1: Logical Framework

	INTERVENTION LOGIC	OBJECTIVELY VERIFIABLE INDICATORS	SOURCES OF VERIFICATION	ASSUMPTIONS
Overall objective	The global objective of the Vietnam Private Sector Support Programme (VPSSP) is poverty alleviation and job creation via promotion of the private sector, in particular of Vietnamese small and medium enterprises (SMEs), and its integration into the international economy.	▪ Improvement of economic activity and job creation, in particular at provincial level. ▪ Reduction of disparities in the economic development of provinces	National statistics PRSC review IMF reviews	
Purpose	The Programme purpose is to strengthen the administrative capacity and operational effectiveness of SME-related local government structures and private sector associations, fostering SME's development, in line with the reform process leading towards a market-oriented economy in Vietnam.	To be assessed at the level of intervention (provincial) [4]: ▪ Improved human resources from central and local authorities on best practice private sector development policies and administration; ▪ Improved economic environment and SME growth in targeted provinces (eg, 5 to 10 % increase); ▪ Better public-private sector dialogue on policies conducive to sustainable SME development; ▪ Improved partnership between European and Vietnamese enterprises, including innovative operations and transfer of know.	National and Provincial business statistics Independent evaluations by SMEs and their representative associations	Continuous support of the Vietnamese Authorities on private sector development; Relevant statistics can be produced; Evaluations can be obtained from SMEs and associations

[4] Objectively verifiable indicators will be refined, if needed, during the inception phase, which will define the base line

	INTERVENTION LOGIC	OBJECTIVELY VERIFIABLE INDICATORS	SOURCES OF VERIFICATION	ASSUMPTIONS
Expected results	1. Improved administrative and regulatory environment for SME development at Provincial level (nine provinces targeted)	The degree of coverage and in-depth implementation of Provincial Action Plans (9 provinces targeted) dealing with: ▪ Identification of local regulatory and administrative constraints hampering SME development (base line stidies) ▪ Identification of Guidelines and Best Local Regulatory Practice to promote SME development; ▪ Consensus by public and private stakeholders to implement simpler, transparent and fairer regulation (including the related forms); ▪ Business registration , subsequent licensing and certification procedures are simplified; ▪ Provincial policy on commercial and industrial land use is clear and ensures rapid and effective provision for private sector investors; rapis issuance of certificates on land use rights and home ownership; a modern system of land registration is adopted in each targeted Province; ▪ Taxation reporting requirements and payment procedures are simplified, transparent and fair; ▪ Regulatory controls and tax inspections are streamlined, transparent and fair; ▪ Reduction of the compliance costs for SMEs, (measured in time and costs); ▪ General information about business provincial economic and enterprise development policy and related regulations is published and accessible;	Independent evaluation; MPI/DPI statistics; Local authorities "official journal"	Commitment by the provincial authorities; Improvements on the Law on corporate income tax, with equal tax rate for all enterprises; Improvement in the Land law, allowing private enterprises to transfer land user certificates.

	INTERVENTION LOGIC	OBJECTIVELY VERIFIABLE INDICATORS	SOURCES OF VERIFICATION	ASSUMPTIONS
	2. Improved public-private sector dialogue conducive to SME development	▪ Number of consultative arrangements formalised for constructive government-private sector dialogue at central and provincial level; ▪ Number of public-private workshops implemented on SME policy issues; ▪ Number of draft SME development policy documents widely consulted with private sector before promulgation; ▪ Number of recommendations by private sector on SME development policy are implemented;	Independent evaluation; Central and Provincial authorities reporting;	Commitment by the provincial authorities;
	3. Enhanced capacity of business associations to represent private sector interests needs and increased availability of business support services for SME's at Provincial level	▪ Number of private sector business associations providing effective advocacy services and gateways to support SME-development has increased in targeted provinces; ▪ Fee paying membership of business associations has increased; ▪ Number and variety of BDS providers informed of market niches at provincial level; ▪ SMEs demand for and take-up of professional business support services has increased (eg 5 to 10%); ▪ The range and quality of appropriate business support services available to SMEs has improved (eg 5 to 10%);	Independent evaluation Business associations reporting; Programme TA	Improvement in the law on Business Associations issued, clarifying their role and liberalising their activities.
	4. Creation of new enterprises facilitated through the establishment of replicable business-technology incubators in selected sectors (Food processing in Hanoi and Information technologies in Ho Chi Minh City)	▪ Clarification of the legal status and activities that can be undertaken by business associations; ▪ Incubators are economically viable, with a cost recovery of 100% at programme end; ▪ Authorities elaborated plans for replication based on experience; ▪ Number of companies and of employment created and amount of revenues generated (eg 20 companie/3 years per Incubator); ▪ Viability and growth of incubated companies above average (sector/provinces); ▪ Number of international business-to-business linkages and in particular between EU and Vietnam firms.	Independent evaluation Programme reporting Government and local authorities statistics,	Public/ private partnership support technically and financially the establishment of the incubators;

ACTIVITIES	Inputs	INDICATIVE TOTAL COSTS: (EUR)	PRE-CONDITIONS
Component 1: Enabling SME environment in Provinces	1. Services (European and local long term and short term TA); 2. Supplies /Equipment; 3. Operating costs; 4. Information	1. 2,622,000 € 2. 55,000 € 3. 458,000 € 4. 50,000 €	National contribution mobilised; Agreement on the selection criteria for the 6 further provinces.
Component 2: Support the start up of two Business Incubators	1. Services (European and local long term and short term TA); 2. Supplies /Equipment; 3. Operating costs; 4. Information	1. 2,000,000 € 2. 825,000 € 3. 2,590,000 € 4. 50,000 €	National and private sector contribution mobilised; Agreement on the location of incubators and on the selection criteria for the companies.
Horizontal (co-ordination) component	1. Services (European and local long term and short term TA); 2. Supplies /Equipment; 3. Operating costs; 4. Information Contingency (to be mobilised in priority to reinforce Component 1 activities in provinces – Local Services)	1. 1,560,000 € 2. 70,000 € 3. 335,000 € 4. 100,000 € 430,000 €	National contribution mobilised; Vietnamese Programme Director and other Staff rapidly mobilised Detail plan of activities to justify release of contingency

Attachment 2: **FINANCIAL IDENTIFICATION**

ACCOUNT HOLDER

BENEFICIARY'S NAME

ADDRESS

TOWN/CITY POSTCODE

CONTACT PERSON

TELEPHONE FAX

E - MAIL

VAT NUMBER

BANK

BANK NAME

BRANCH ADDRESS

TOWN/CITY POSTCODE

ACCOUNT NUMBER + CODES

IBAN (optional)

REMARKS :

BANK STAMP + SIGNATURE of BANK REPRESENTATIVE (Both Obligatory)	**DATE + SIGNATURE of ACCOUNT HOLDER :** (Obligatory)

BỘ NGOẠI GIAO

Số : 120 /2004 /LPQT

SAO Y BẢN CHÍNH

Hà Nội, ngày 16 tháng 12 năm 2004

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Hoàng Anh

Nơi nhận :

- Văn phòng Quốc hội (để báo cáo),
- Văn phòng Chủ tịch nước (để báo cáo),
- Văn phòng Chính phủ (để báo cáo),
- Văn phòng Chính phủ (để đăng Công báo),
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Bộ Thương mại,
- Ngân hàng Nhà nước Việt Nam,
- Đại sứ quán Việt Nam và Phái đoàn Việt Nam bên cạnh EU tại Bỉ,
- Vụ Châu Âu 2, Bộ Ngoại giao,
- Vụ Tổng hợp kinh tế, Bộ Ngoại giao,
- Vụ Hợp tác kinh tế đa phương, Bộ Ngoại giao,
- Vụ Luật pháp và Điều ước quốc tế, Bộ Ngoại giao,
- Lưu trữ, Bộ Ngoại giao.

Hiệp định tài chính giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Uỷ ban Châu Âu về Chương trình hỗ trợ khu vực tư nhân của Việt Nam có hiệu lực từ ngày 07 tháng 10 năm 2004.