HB1712

AGREEMENT

between

GOVERNMENT OF THE SOCIALIST REPUBLIC
OF VIET NAM

and

ASIAN DEVELOPMENT BANK

regarding

THE RESIDENT MISSION
OF THE ASIAN DEVELOPMENT BANK

AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM AND THE ASIAN DEVELOPMENT BANK REGARDING THE RESIDENT MISSION OF THE ASIAN DEVELOPMENT BANK

The Government of the Socialist Republic of Viet Nam (hereinafter referred to as the Government) and
The Asian Development Bank (hereinafter referred to as the Bank),

DESIRING to conclude an agreement regarding the Resident Mission of the Bank in Viet Nam,

HAVE AGREED as follows:

ARTICLE I

Definitions

Section 1. Wherever used in this Agreement, unless the context otherwise requires, the following terms have the following meanings:

(a) "Viet Nam" means the Socialist Republic of Viet Nam;

(b) "Laws of Viet Nam" means the Constitution and laws of Viet Nam, and includes ordinances, decrees, regulations and orders issued by or under the authority of the Government or its agencies;

(c) "Resident Mission" means the Resident Mission of the Bank in Viet Nam;

(d) "Resident Mission Seat" means the premises occupied by the Resident Mission, including where applicable any buildings and the land ancillary thereto as may be utilized for the purposes of the Resident Mission;

(e) "appropriate authorities of Viet Nam" means such authorities in Viet Nam as may be appropriate in the context and in accordance with the laws and customs applicable in Viet Nam;

(f) "Member Country" means a country which is a member of the Bank;

(g) "Representatives of Member Countries" means accredited officials of delegations of Member Countries, and includes all alternates, advisers and technical experts assisting such officials;

(h) "Officers and Staff of the Bank" means all personnel of the Bank;

(i) "Officers and Staff of the Resident Mission" means all personnel of the Bank appointed by the Bank to the Resident Mission;

(j) "Resident Representative" means the principal executive official of the Resident Mission appointed by the Bank;

(k) "dependents" means the dependents of the Officers and Staff of the Resident Mission, and includes their spouses, parents, children and other persons who are primarily dependent on such personnel for financial support;

(l) "members of the household staff" means persons, other than nationals of Viet Nam, employed in the domestic staff of Officers and Staff of the Resident Mission;

(m) "meetings convened by the Bank" means meetings of the Bank or the Resident Mission, including any international conference or other gathering convened by the Bank or the Resident Mission;

(n) "property" of the Bank means all assets of the Bank and includes funds, income and rights belonging to, or held or administered by, the Bank; and

(o) "Charter" means the Agreement Establishing the Asian Development Bank.

ARTICLE II

Juridical Personality

Section 2. The Bank shall have full juridical personality and, in particular, full capacity to undertake the actions indicated in Article 49 of the Charter in Viet Nam.

ARTICLE III

Immunities of the Bank

Section 3. Subject to the provisions of Article 50, of the Charter, the Bank shall enjoy immunity from every form of legal process, and shall enjoy in full the immunities described in Articles 51 - 54 of the Charter and this Agreement.

ARTICLE IV

The Resident Mission Seat

Section 4. The Bank may establish a Resident Mission in Hanoi, Viet Nam to facilitate the efficient conduct of the operations of the Bank in Viet Nam.

Section 5. The Resident Mission shall be headed by a Resident Representative and shall be staffed with such other personnel as may be appointed thereto by the Bank.

Section 6. The Government shall, if requested, assist the Bank to secure premises necessary for the Resident Mission Seat and the facilities required for the establishment and operations of the Resident Mission. The Bank shall prevent the Resident Seat from becoming a refuge for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or a judicial proceeding.

Section 7. The Bank may obtain local staff either from employment services offered by the Government, or directly from the local market, and to facilitate the recruitment process of local staff, the Bank will cooperate with the appropriate authcrities of Viet Nam in completing recruitment formalities.

ARTICLE V

Inviolability of the Resident Mission Seat

Section 8. (a) The Resident Mission Seat shall be inviolable and shall be under the control and authority of the Bank. No authorities of Viet Nam shall enter the Resident Mission Seat to perform any duties therein without the consent of, and under conditions agreed to by, the Bank or the Resident Mission. However, the Bank and the

Government agree that the appropriate authorities of Viet Nam may enter into the Resident Mission Seat in connection with fire or other emergencies requiring prompt action.

(b) The Bank shall have the power to make rules and regulations operative within the Resident Mission Seat for the full and independent exercise of its operations and performance of its functions including in respect of meetings convened by the Bank.

Section 9. Except as otherwise provided in this Agreement, the Laws of Viet Nam shall apply within the Resident Mission Seat, and the courts of Viet Nam shall have jurisdiction over acts done in the Resident Mission Seat.

ARTICLE VI

Protection of the Resident Mission Seat

Section 10. The appropriate authorities of Viet Nam shall exercise due diligence to ensure that the tranquility of the Resident Mission Seat is not disturbed by any person attempting unauthorized entry or creating disturbances in the immediate vicinity of the Resident Mission Seat.

ARTICLE VII

Public Services

Section 11. The Government shall assist the Bank to secure services required to maintain the Resident Mission Seat in a condition suitable for the effective discharge of the functions of the Resident Mission.

Section 12. The Government shall provide the Resident Mission Seat, on terms not less favorable than those accorded to any other international organization or government including its diplomatic mission in Viet Nam, with allotments of gasoline and fuel for transport and with the necessary public services, including post, telephone, telegraph, electricity, gas, water, sewage, drainage, collection of refuse and fire protection. In case of any interruption or threatened interruption of any of such services the Government shall take appropriate steps to ensure that the operations of the Resident Mission are not prejudiced.

Section 13. The Government shall, if requested, assist the Bank to secure suitable housing accommodation for Officers and Staff of the Resident Mission and their dependents.

ARTICLE VIII

Property of the Bank and Taxation

Section 14. The Bank, its property and its operations and transactions shall be exempt from:

(a) all taxation and any obligation for the payment, withholding or collection of any tax or duty as and to the extent provided in Article 56 of the Charter, however, the Bank will not claim exemption from taxes or charges which are not more than payments for public utility services; and

(b) all prohibitions, restrictions, customs duties, taxes and other levies on any goods, articles, including motor vehicles, spare parts and publications, imported or exported by the Bank for its official use; provided that the importation and disposal locally of any such goods and articles shall be subject to the Laws of Viet Nam and such terms as may be agreed upon with the Government, which shall not be less favorable than those applicable to any other international organization or government including its diplomatic mission in Viet Nam.

ARTICLE IX

Financial Facilities

Section 15. For the effective discharge of the functions of the Resident Mission, the Government agrees that the Bank may:

(a) on terms not less favorable than those provided to any other international organization or government including its diplomatic mission in Viet Nam, enter into such arrangements and carry out such transactions with respect to banking and financial matters as the Bank deems necessary;

(b) exchange the national currency of Viet Nam for such convertible currency as the Bank may from time to time require and at the most favorable exchange rate prevailing in the market or quoted by the State Bank of Viet Nam; and

(c) for the purposes of meeting local currency expenditures in Viet Nam, utilize any portion of the subscriptions of Viet Nam to the capital stock of the Bank which have been paid in the national currency of Viet Nam.

ARTICLE X

Communications

Section 16. The Government shall ensure that the Bank shall be accorded the same rates and treatment as may be granted to any other international organization or government including its diplomatic mission in Viet Nam with respect to all communications and communication facilities, including installation and operation of systems to communicate within and between offices of the Bank, the use of codes, couriers and sealed bags, information to media and for the use of transportation facilities.

ARTICLE XI

Transit and Residence

Section 17. In accordance with Article 55 of the Charter, the Government shall take, without any restriction and irrespective of nationality or relations among governments, all measures required to facilitate the granting of visas without charge, entry into, and where applicable residence in, and departure from Viet Nam, and subject to the laws of Viet Nam freedom of movement in Viet Nam, of Representatives of Member Countries, Officers and Staff of the Bank and the Resident Mission, experts performing missions for the Bank, persons invited by the Bank or the Resident Mission on official business, their dependents and, where applicable, members of their household staff. The Bank or the Resident Mission shall communicate the names of such persons to the Government.

ARTICLE XII

Privileges and Immunities of the Officers and Staff

Section 18. Officers and Staff of the Resident Mission and the Bank including experts performing missions for the Bank, shall enjoy within and with respect to Viet Nam the following privileges and immunities:

(a) immunity from legal process with respect to words spoken or written and all acts performed by them in their official capacity, except when the Bank waives the immunity;

(b) exemption from taxation on or in respect of the salaries and emoluments paid by the Bank;

(c) treatment in respect of exchange restrictions not less favorable than that accorded to officials of comparable rank of other international organizations;

(d) the same treatment granted by the Government to any other international organization and diplomatic envoys in respect of repatriation facilities in time of international crises, together with their dependents and members of their household staff; and

(e) the right to import during their assignment in the Resident Mission, free of duty, taxes and other levies, prohibitions and restrictions on imports, their furniture, appliances, automobile (s) and other effects including foodstuff and other articles for personal use and consumption; provided that the importation and disposal locally of such articles and effects (except food and other articles for personal use and consumption) shall be subject to the laws of Viet Nam, and such terms as may be agreed upon with the Government, which shall not be less favorable than those applicable to any other international organization or government including its diplomatic mission in Viet Nam.

Section 19. Officers and Staff of the Resident Mission, their dependents and members of their household staff shall be exempt from national service obligations in Viet Nam. This exemption shall not apply to nationals of Viet Nam.

Section 20. In addition to the immunities and privileges specified in Section 19 and 20 of this Agreement, the Resident Representative, including any official appointed by the Bank to act on his or her behalf during his or her absence from duty, shall be accorded personally and in respect of his or her spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

Section 21. Persons who are invited to the Resident Mission Seat by the Bank or the Resident Mission on official business, shall be accorded the privileges and immunities specified in Section 19 of this Agreement other than those specified in paragraphs (e) thereof, provided further that the persons are not nationals of Viet Nam.

Section 22. The Bank shall from time to time communicate to the Government the names of those Officers and Staff of the Resident Mission and the Bank and other persons to whom the provisions of this Article and Article XI shall apply.

Section 23. All Officers and Staff of the Resident Mission, other than those who are locally hired, shall be provided by the Department of Protocol of the Ministry of Foreign Affairs with an identity card certifying that they are Officers and Staff of the Bank and that they are entitled to the exemptions, privileges and immunities provided for or referred to in this Agreement.

Section 24. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interest of the Bank and not for the personal benefit of the individuals themselves. The Bank shall waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunities are accorded.

Section 25. The Bank shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. There shall be consultation between the Government and the Bank, should the Government consider that an abuse has occurred.

ARTICLE XIII

Settlement of Disputes

Section 26. Any dispute between the Government and the Bank concerning the interpretation or application of this Agreement or any supplementary agreements, or any question affecting the Resident Mission Seat or the relationship between the Government and the Bank, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to an ad-hoc tribunal of three arbitrators: one to be appointed by the Government, one to be appointed by the Bank, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third, unless the Government and the Bank agree otherwise, the third arbitrator shall be chosen by the President of the International Court of Justice. A majority vote of the arbitrators shall be sufficient to reach decision which shall be final and binding. The third arbitrator shall be empowered to settle all questions of procedure in any case where there is disagreement with respect thereto.

Section 27. The tribunal referred to in Section 26 of this Agreement shall adopt and observe such rules as they consider appropriate in the circumstances.

ARTICLE XIV

Other Provisions

Section 28. Wherever this Agreement imposes obligations on the authorities of Viet Nam other than the Government, the Government shall ensure the fulfillment of such obligations.

Section 29. None of the provisions of this Agreement shall be deemed to modify or amend the Charter, or impair or limit the rights, immunities, privileges or exemptions provided for and specified in the Charter.

Section 30. The Government and the Bank may enter into such supplementary agreements as may be necessary within the scope of this Agreement.

Section 31. This Agreement is made in two copies in English, each considered as an original.

Section 32. This Agreement shall enter into force upon signature by the parties thereto, and remain in force until it is terminated by mutual accord between the parties or when the Resident Office is closed by the Bank.

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

Done at _____ this 23 day of December 1996.

For and on behalf of the
GOVERNMENT OF THE SOCIALIST
REPUBLIC OF VIET NAM

By GOVERNOR, CAO SI KIEM

Authorized Representative

For and on behalf of the
ASIAN DEVELOPMENT BANK

By Mitsuo Sato

BỘ NGOẠI GIAO

Số : 01 /LPQT

SAO Y BẢN CHÍNH

"Để báo cáo,
Để thực hiện".

Hà Nội, ngày 24 tháng 1 năm 1997.

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

Nơi gửi:

- VPCP,
- Bộ Kế hoạch - ĐT,
- Bộ Nội vụ,
- Bộ Tài chính,
- Ngân hàng NN,
- Tổng cục Hải quan,
- Cục Lãnh sự,
- Cục Phục vụ ĐNG,
- Vụ Lễ tân,
- Vụ LPQT,
- LT (11b)

BỘ NGOẠI GIAO

Nguyễn Quý Bính