**MINISTRY OF PLANNING AND INVESTMENT**
**OF SOCIALIST REPUBLIC OF VIET NAM**

*Hanoi, March 31, 2015*

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam:

1. A loan in Japanese yen up to the amount of ninety-seven billion four hundred and fourteen million yen (¥97,414,000,000) (hereinafter referred to as "the Loan") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by the Japan International Cooperation Agency (hereinafter referred to as "JICA") for the purpose of implementing the projects enumerated in Column 1 of the Annex attached hereto (hereinafter referred to as "the Projects") according to the allocation for each project as specified in Column 2 of the Annex attached hereto.

2. (1) The Loan will be made available by loan agreements to be concluded between the Government of the Socialist Republic of Viet Nam and JICA. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreements, within the scope of the present understanding, which will contain, inter alia, the rate of interest, the repayment period and the disbursement period enumerated respectively in Columns 3, 4 and 5 of the Annex attached hereto.

**His Excellency**
**Mr. Hiroshi Fukada**
**Ambassador Extraordinary**
**and Plenipotentiary of Japan**

(2) The loan agreements mentioned in sub-paragraph (1) above will be concluded after JICA is satisfied with the feasibility of the Projects, including environmental consideration.

(3) The respective disbursement periods enumerated in Column 5 of the Annex attached hereto may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan will be made available to cover payments to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the Projects, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan may be used to cover eligible local currency requirements for the implementation of the Projects.

4. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3 are procured in accordance with the guidelines for procurement of JICA, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

6. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3 shall be accorded such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

7. The Government of the Socialist Republic of Viet Nam shall exempt:

(a) JICA from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan as well as interest accruing therefrom; and

(b) Japanese companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in the Socialist Republic of Viet Nam with respect to the import and re-export of their own materials and equipment needed for the implementation of the Projects.

8. The Government of the Socialist Republic of Viet Nam shall take necessary measures to:

(a) ensure that the Loan be used properly and exclusively for the Projects;

(b) ensure and maintain the safety of persons engaged in the implementation of the Projects and of the general public of the Socialist Republic of Viet Nam in constructing the facilities under the Loan and in using such facilities; and

(c) ensure that the facilities constructed under the Loan be maintained and used properly and effectively for the purpose prescribed in the present understanding.

9. While ensuring fair treatment of sources of information and data, the Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and JICA with:

(a) information and data concerning the progress of the implementation of the Projects; and

(b) any other information, including information on corrupt practice, related to the Projects.

10. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

11. The Annex attached hereto shall form an integral part of the present Note.

I have further the honour to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of the Socialist Republic of Viet Nam

the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration."

I have further the honour to confirm on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding and to agree that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force on the date of this Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

**Bui Quang Vinh**
**Minister of Planning and Investment**
**of the Socialist Republic of Viet nam**

# Record of Discussions

In connection with the Exchange of Notes between the Government of the Socialist Republic of Viet Nam and the Government of Japan dated March 31, 2015, concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam (hereinafter referred to as "the Exchange of Notes"), the representatives of the Vietnamese Delegation and of the Japanese Delegation wish to record the following:

1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, paragraphs 1 and 2 of Japanese Note Verbale No. 22/2015 dated March 31,2015, and Vietnamese Note Verbale No.1785/BKHĐT-KTĐN dated March 31,2015, it was a shared view of the two Delegations that:

(a) suppliers and contractors of eligible source countries mean nationals of eligible source countries or juridical persons incorporated and registered in those countries, and which have their appropriate facilities for producing or providing goods and services in those countries and actually conduct their business there;

(b) consultants of eligible source countries mean nationals of eligible source countries or juridical persons controlled by nationals of those countries;

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%); and

(d) notwithstanding sub-paragraph (a) above, in cases where a subsidiary incorporated in a country or region other than Japan is included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances, such a subsidiary will be regarded as a Japanese supplier or contractor.

2. With regard to paragraph 3 of Japanese Note Verbale and Vietnamese Note Verbale mentioned in Paragraph 1 above, it was a shared view of the two Delegations that:

(1) products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meet the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country or region.

(2) products procured from a manufacturing company in a developed country or region other than Japan will be regarded as products procured from Japan if it is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances.

(3) products procured from a manufacturing company invested in by one or more Japanese companies and located in one of the developing countries and territories listed in the List of Recipients of Official Development Assistance approved by the Development Assistance Committee of the Organization for Economic Co-operation and Development other than the Socialist Republic of Viet Nam, will be regarded as products procured from Japan, if they meet the following:

(a) not less than one third (1/3) of the shares of the manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above is the same as or greater than that of the shares held by any company of a country or region other than Japan and the country or the territory where the manufacturing company is located.

3. With regard to paragraph 3 of Japanese Note Verbale and Vietnamese Note Verbale mentioned in paragraph 1 above, it was a share view of the two Delegations that:

(a) any services provided by a company of a country or region other than Japan which form a joint venture with a Japanese company will not be regarded as services provided by a Japanese company; and

(b) services provided by a subsidiary in a country or region other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances will be regarded as services provided by a Japanese company.

4. With regard to sub-paragraph (3) of paragraph 3 of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects enumerated in Column 1 of the Annex attached to the Exchange of Notes (hereinafter referred to as "the Annex"), the representative of the Japanese Delegation stated that:

(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the projects enumerated in Column 1 of the Annex, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the loan mentioned in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Loan"); and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

5. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in Column 1 of the Annex exceeding the amount of the Loan under the loan agreements mentioned in sub-paragraph (1) of paragraph 2 of the Exchange of Notes, will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the projects enumerated in Column 1 of the Annex.

6. With regard to paragraph 8 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which the Japan International Cooperation Agency (hereinafter referred to as "JICA") will designate and to be paid at JICA's expense, in order to ensure fairness and competitiveness of the procurement process, in case where JICA considers such audit to be necessary.

7. The representative of the Vietnamese Delegation stated that the Vietnamese Delegation had no objection to the statements by the Japanese Delegation mentioned in paragraphs 4, 5 and 6.

深田博史

**Hiroshi Fukada**
**Ambassador Extraordinary and Plenipotentiary of Japan to the Socialist Republic of Viet nam**

**Bui Quang Vinh**
**Minister of Planning and Investment of the Socialist Republic of Viet Nam**

**EMBASSY OF JAPAN**
**HANOI**

*Hanoi March 31, 2015*

Excellency,

I have the honour to confirm the following understanding recently reached between the representatives of the Government of Japan and of the Government of the Socialist Republic of Viet Nam concerning a Japanese loan to be extended with a view to promoting the economic stabilization and development efforts of the Socialist Republic of Viet Nam:

1. A loan in Japanese yen up to the amount of ninety-seven billion four hundred and fourteen million yen (¥97,414,000,000) (hereinafter referred to as "the Loan") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Socialist Republic of Viet Nam by the Japan International Cooperation Agency (hereinafter referred to as "JICA") for the purpose of implementing the projects enumerated in Column 1 of the Annex attached hereto (hereinafter referred to as "the Projects") according to the allocation for each project as specified in Column 2 of the Annex attached hereto.

2. (1) The Loan will be made available by loan agreements to be concluded between the Government of the Socialist Republic of Viet Nam and JICA. The terms and conditions of the Loan as well as the procedures for its utilization will be governed by the said loan agreements, within the scope of the present understanding, which will contain, inter alia, the rate of interest, the repayment period and the disbursement period enumerated respectively in Columns 3, 4 and 5 of the Annex attached hereto.

(2) The loan agreements mentioned in sub-paragraph (1) above will be concluded after JICA is satisfied with the feasibility of the Projects, including environmental consideration.

**His Excellency**
**Mr. Bui Quang Vinh**
**Minister of Planning and Investment**
**of the Socialist Republic of Viet Nam**

(3) The respective disbursement periods enumerated in Column 5 of the Annex attached hereto may be extended with the consent of the authorities concerned of the two Governments.

3. (1) The Loan will be made available to cover payments to be made by the Vietnamese executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the Projects, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above shall be agreed upon between the authorities concerned of the two Governments.

(3) A part of the Loan may be used to cover eligible local currency requirements for the implementation of the Projects.

4. The Government of the Socialist Republic of Viet Nam shall ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3 are procured in accordance with the guidelines for procurement of JICA, which set forth, inter alia, the procedures of international competitive bidding to be followed except where such procedures are inapplicable or inappropriate.

5. With regard to the shipping and marine insurance of the products purchased under the Loan, the Government of the Socialist Republic of Viet Nam shall refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

6. Japanese nationals whose services may be required in the Socialist Republic of Viet Nam in connection with the supply of the products and/or services mentioned in sub-paragraph (1) of paragraph 3 shall be accorded such facilities as may be necessary for their entry into the Socialist Republic of Viet Nam and stay therein for the performance of their work.

7. The Government of the Socialist Republic of Viet Nam shall exempt:

(a) JICA from all fiscal levies and taxes imposed in the Socialist Republic of Viet Nam on and/or in connection with the Loan as well as interest accruing therefrom; and

(b) Japanese companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in the Socialist Republic of Viet Nam with respect to the import and re-export of their own materials and equipment needed for the implementation of the Projects.

8. The Government of the Socialist Republic of Viet Nam shall take necessary measures to:

(a) ensure that the Loan be used properly and exclusively for the Projects;

(b) ensure and maintain the safety of persons engaged in the implementation of the Projects and of the general public of the Socialist Republic of Viet Nam in constructing the facilities under the Loan and in using such facilities; and

(c) ensure that the facilities constructed under the Loan be maintained and used properly and effectively for the purpose prescribed in the present understanding.

9. While ensuring fair treatment of sources of information and data, the Government of the Socialist Republic of Viet Nam shall, upon request, furnish the Government of Japan and JICA with:

(a) information and data concerning the progress of the implementation of the Projects; and

(b) any other information, including information on corrupt practice, related to the Projects.

10. The two Governments shall consult with each other with respect to any matter that may arise from or in connection with the present understanding.

11. The Annex attached hereto shall form an integral part of the present Note.

I have further the honour to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of the Socialist Republic of Viet Nam the foregoing understanding shall constitute an agreement between the two Governments, which shall enter into force on the date of Your Excellency's Note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

深田 博史

Hiroshi Fukada
Ambassador Extraordinary
And Plenipotentiary of Japan
to the Socialist Republic of Viet Nam

Annex

| Column 1 | | Column 2 | | Column 3 | Column 4 | Column 5 |
|---|---|---|---|---|---|---|
| Project | | Maximum amount | | Rate of interest | Repayment period | Disbursement period (after the effective date of the loan agreement) |
| 1. | Thai Binh Thermal Power Plant and Transmission Lines Construction Project (III) | 9,873 million Yen | | 1.4% | twenty (20) years after the grace period of ten (10) years | eight (8) years |
| | | | The part concerning payments to consultants | 0.01% | | |
| 2. | North-South Expressway Construction Project (Ben Luc - Long Thanh Section) (II) | 31,328 million Yen | | 0.1% | thirty (30) years after the grace period of ten (10) years | nine (9) years |
| | | | The part concerning payments to consultants | 0.01% | | |
| 3. | Second Power Transmission and Distribution Network Development Project | 29,786 million Yen | | 1.4% | twenty (20) years after the grace period of ten (10) years | seven (7) years |
| 4. | Ha Long City Water Environment Improvement Project (Engineering Services) | 1,061 million Yen | The part concerning payments to consultants | 0.01% | thirty (30) years after the grace period of ten (10) years | six (6) years |
| 5. | Dong Nai Province Water Infrastructure Construction Project | 14,910 million Yen | | 1.4% | twenty (20) years after the grace period of ten (10) years | ten (10) years |
| | | | The part concerning payments to consultants | 0.01% | | |
| 6. | Can Tho University Improvement Project | 10,456 million Yen | | 0.3% | thirty (30) years after the grace period of ten (10) years | ten (10) years |
| | | | The part concerning payments to consultants | 0.01% | | |

Total amount: 97,414 million Yen

3. With regard to paragraph 3 of Japanese Note Verbale and Vietnamese Note Verbale mentioned in paragraph 1 above, it was a share view of the two Delegations that:

(a) any services provided by a company of a country or region other than Japan which form a joint venture with a Japanese company will not be regarded as services provided by a Japanese company; and

(b) services provided by a subsidiary in a country or region other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances will be regarded as services provided by a Japanese company.

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(a) such local currency requirements as general administrative expenses, interest during construction, taxes and duties, expenses connected to offices, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the projects enumerated in Column 1 of the Annex, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the loan mentioned in paragraph 1 of the Exchange of Notes (hereinafter referred to as "the Loan"); and

(b) the procurement of products and/or services will be made in accordance with the procedures of competitive bidding except where such procedures are inapplicable or inappropriate.

5. With regard to the Loan, the representative of the Japanese Delegation stated that any financial requirements of the projects enumerated in Column 1 of the Annex exceeding the amount of the Loan under the loan agreements mentioned in sub-paragraph (1) of paragraph 2 of the Exchange of Notes, will be duly met by the Government of the Socialist Republic of Viet Nam to assure the smooth implementation of the projects enumerated in Column 1 of the Annex.

6. With regard to paragraph 8 of the Exchange of Notes, the representative of the Japanese Delegation stated that:

(a) the necessary measures referred to in the said paragraph include measures preventing any offer, gift or payment, consideration or benefit which would be construed as a corrupt practice in the Socialist Republic of Viet Nam from being made as an inducement to or reward for the award of the contracts referred to in sub-paragraph (1) of paragraph 3 of the Exchange of Notes; and

(b) the Government of the Socialist Republic of Viet Nam will take all necessary measures to enable and facilitate ex-post procurement audit to be carried out by independent auditors which the Japan International Cooperation Agency (hereinafter referred to as "JICA") will designate and to be paid at JICA's expense, in order to ensure fairness and competitiveness of the procurement process, in case where JICA considers such audit to be necessary.

7. The representative of the Vietnamese Delegation stated that the Vietnamese Delegation had no objection to the statements by the Japanese Delegation mentioned in paragraphs 4, 5 and 6.

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# Record of Discussions

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1. With regard to sub-paragraph (1) of paragraph 3 of the Exchange of Notes, paragraphs 1 and 2 of Japanese Note Verbale No. 22/2015 dated March 31,2015, and Vietnamese Note Verbale No.1785/BKHĐT-KTĐN dated March 31,2015, it was a shared view of the two Delegations that:

(a) suppliers and contractors of eligible source countries mean nationals of eligible source countries or juridical persons incorporated and registered in those countries, and which have their appropriate facilities for producing or providing goods and services in those countries and actually conduct their business there;

(b) consultants of eligible source countries mean nationals of eligible source countries or juridical persons controlled by nationals of those countries;

(c) notwithstanding sub-paragraphs (a) and (b) above, in cases where one or more suppliers, contractors or consultants of the Socialist Republic of Viet Nam form a joint venture with Japanese ones, such a joint venture will be regarded as a Japanese supplier, contractor or consultant provided that the lead partner of the said joint venture is a Japanese supplier, contractor or consultant and that the total share of work of Japanese ones in the said joint venture is more than fifty per cent (50%); and

(d) notwithstanding sub-paragraph (a) above, in cases where a subsidiary incorporated in a country or region other than Japan is included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances, such a subsidiary will be regarded as a Japanese supplier or contractor.

2. With regard to paragraph 3 of Japanese Note Verbale and Vietnamese Note Verbale mentioned in Paragraph 1 above, it was a shared view of the two Delegations that:

(1) products procured from a Vietnamese manufacturing company invested in by one or more Japanese companies will be regarded as products procured from Japan, if they meet the following:

(a) not less than ten per cent (10%) of the shares of the Vietnamese manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above (or the company having the largest share among Japanese companies if more than one Japanese company meet the condition stated in (a) above) is the same as or greater than that of the shares held by any company of a third country or region.

(2) products procured from a manufacturing company in a developed country or region other than Japan will be regarded as products procured from Japan if it is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of a Japanese company made in accordance with the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan and the related ministerial ordinances.

(3) products procured from a manufacturing company invested in by one or more Japanese companies and located in one of the developing countries and territories listed in the List of Recipients of Official Development Assistance approved by the Development Assistance Committee of the Organization for Economic Co-operation and Development other than the Socialist Republic of Viet Nam, will be regarded as products procured from Japan, if they meet the following:

(a) not less than one third (1/3) of the shares of the manufacturing company are held by a Japanese company; and

(b) the proportion of the shares held by the Japanese company mentioned in (a) above is the same as or greater than that of the shares held by any company of a country or region other than Japan and the country or the territory where the manufacturing company is located.